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THE

LACK OF GOLD;

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OR,

AN ENQUIRY

INTO THE

State of the Paper Currency of England,

UNDER THE

OPERATION OF LORD STANHOPE'S ACT.

R R c.18

PRINTED FOR

LONGMAN, HURST, REES, ORME, AND BROWNE,
PATER-NOSTER-ROW, LONDON.

1812

[*Price Two Shillings.*]

353.53
Sta/Lac
27778

Printed by Richard Cruttwell,
St. James's-Street, Bath.

THE

LACK OF GOLD, &c.

AFTER the great mass of writing, of every varied degree of merit, which has appeared on the subject of our Paper Currency, the public will scarcely be prepared to expect much of novelty in any elucidations which at this late period may be offered to their attention. There is, however, one branch of the discussion, and that involving the fundamental doctrines of the whole question at issue, which seems as yet to have been imperfectly examined; and a writer who, for the first time

entering the lists of this protracted combat, presumes to hope that he can supply the omission, exercises but an ordinary degree of modesty and prudence, in assuming an anonymous garb to shield him from the imputation of arrogance.

In what degree the name of the Author of the ensuing remarks would or would not influence the impression with which his reasoning may be received, is a question which he purposely desires to avoid; because he is anxious that the arguments, such as they are, should be received with the exact degree of weight which abstractedly belongs to them.

That a material difference of value has gradually taken place between our gold coinage and paper currency, is a fact of universal notoriety. But *whether this difference has arisen from a rise in the*

price of gold, or a fall in the price of paper, is the question which we propose to examine.

That a large and increasing proportion of the community embraced the opinion of a gradual depreciation of the paper currency, is evinced by a series of public measures,—the appointment of a Committee to investigate the subject,—the Report of that Committee in affirmation of this opinion,—the alarm excited by the proceedings of Lord KING, founded on this opinion, in demanding payment in gold from his tenants; and finally, the interference of Parliament to stop such demands.

At the period when Lord KING adopted this proceeding, double prices had not actually been established in practice; the question was even then perhaps of doubtful legality, and still

more doubtful expediency ; the seller of gold found it more convenient to exchange it for paper than for commodities ; the scarcity had not yet produced, but it was predicted that it would produce, the effect of commodities being at one price for gold, and at another for paper ; by which result the advocates of the doctrine of the depreciation of paper, contended that this doctrine would be indisputably established. Whether the fact were abstractedly so, was a question on which neither theoretical nor practical men were entirely agreed among themselves, nor with each other ; but the very doubt, whether the currency of the country were in a rapid state of depreciation, was in itself an evil of the first magnitude, in its effects on commercial credit, and public confidence. To arrest the progress of so serious an

evil, the Bill proposed by Lord STANHOPE, although strenuously opposed, and at first received even by Ministers with diffidence and doubt, quickly passed into a law. As it prohibited the interchange of gold and paper, except at the Mint price, at which gold could be no longer obtained, that metal has necessarily disappeared altogether as a portion of the circulating medium: And it is the nature and state of our Paper Currency under the operation of this Act that we propose to investigate, in the hope that the result of our examination may contribute to decide the important question which we have proposed as the direct object of this inquiry.

As in every community the use of a circulating medium was preceded by barter, the operations of barter necessarily first settled the relative

values of different articles of consumption, these having of course constituted the first articles of interchange. The growing experience of the advantages of interchange naturally suggested the means of giving facility to its operations, and produced the contrivance of a circulating medium, which should be indifferently exchangeable for all commodities. This medium, in consequence of its extended application, assumed a conventional value, in relation to commodities, above that which it intrinsically bore; for by giving to the substance itself a new capacity of an urgent and general nature, it came into more general demand, and accordingly increased in price: That which was exchangeable for all commodities, was more useful, and consequently more valuable, than that which was exchangeable for only

one or two commodities. Unquestionably, an ox was of greater intrinsic value than the bit of gold for which he was exchanged, but the conventional value of the gold made it exchangeable for articles which the ox could not purchase. The trite but conclusive example of *bits of leather* and *shells*, things of no intrinsic worth, assuming a conventional value as the circulating medium of different countries, furnishes a satisfactory illustration of the fundamental distinction between real and conventional value in all currencies, without exception. England has always desired to equalize these values as much as possible, and for this purpose has defrayed at the public expense all the charges of its coinage; but her best efforts, in what have been deemed her best times, have only produced an approximation: it was impossible to

render absolutely fixed the intrinsic value of any coin, while the metal of which it was composed was subject to perpetual variations of price.

It is supposed that the precious metals were originally adopted for the purposes of a circulating medium, from being more durable and portable than any other articles which could be selected: more durable, because less subject to oxidation and other sources of decay; and more portable, as their scarcity tended to exalt and preserve both their real and conventional value: for though possessing real value from being convertible to other purposes, they still passed at a higher rate in the character of a medium of exchange.

As the operations of commerce became more extensive and complicated, not only within communities, but

between separate states, the material saving of the expense of conveyance first suggested the contrivance of bills of exchange for payments to be made in distant countries, at long dates; and the experience of their convenience gradually introduced the expedient of similar bills payable at short dates, or on demand, to specific persons; and afterwards generally to *bearer* for immediate communication: Which bills payable to bearer on demand (or Bank Notes) became supplemental to the precious metals as a circulating medium, each being reciprocally convertible into the other on demand. In England, this paper was not made a legal tender: but being exchangeable for coin at the National Bank, its value had a direct reference to our principal coinage, or rather rested upon it. Thus it was a paper repre-

sentative of gold, which gold represented commodities: as representative of gold, and accordingly exchangeable for it at the Bank, it was also a paper of credit, and not of authority: thus circumstanced, it represented guineas *immediately*, and in its use it also represented commodities, for which it was *immediately* exchangeable. In modern times, when the Bank was restricted from payments in cash, the paper still preserved its representative character in reference to gold; and not being formally made a legal tender, continued to serve as a paper of credit directly exchangeable for commodities. The state of things at length arrived, which produced Lord STANHOPE's Act; and as this Act is in its operation tantamount to a prohibition of the use of guineas as a circulating medium, the paper which represented guineas has

necessarily assumed their place; and accordingly now represents commodities as before, only in a more direct degree. Or to recapitulate the facts,—paper originally represented guineas, which guineas represented commodities; it thus represented commodities circuitously as respected its origin, but practically it represented equally both guineas and commodities: the intermediate object of reference between it and commodities being withdrawn from circulation, it now represents them directly, or without a medium. For if paper had not represented commodities as well as gold before the Bank restriction took effect; how can we account for its having retained its current value with regard to commodities, after it became unexchangeable at the Bank? We say its current value, for assuredly a series of years

had elapsed, before it was even insinuated that any depreciation had taken place. It is not meant to deny that it represented gold immediately before the restriction; but that it retained its value undiminished after it was deprived of that support, is an historical fact, as authentic as any in modern times.

As then the value of gold, as a medium of exchange, was originally conventional; so the value of our paper in supplying its place is also conventional, within the kingdom. The functions which it performs differ in no respect from the functions performed by the gold which formerly circulated: In one respect only it differs from gold as a circulating medium, it is more purely conventional, and is consequently more liable to lose its value from groundless alarms or

prejudices tending to shake the conventional basis on which it rests; a danger, however, from which neither gold, nor any other artificial conventional value, can be wholly secure. We have on no occasion attempted to evade the unquestionable fact, that the comparative scarcity of the precious metals affords a security against rapid depreciation, which is not possessed by paper; but exclusively of the illustrations already offered, the acknowledged fact of their growing abundance having gradually influenced nominal prices, is a practical evidence of their being far from a fixed standard of value. Let it be supposed that the discovery in South America of a mine of unexampled richness threatened in the ensuing year to double the quantity of precious metals in the world. We shall find it difficult to imagine

any intelligent person in this trading nation, whose commercial sensibility would not be so far affected, as to desire with all possible speed to anticipate the event by the conversion of his gold into commodities. It is necessary to impress on minds not accustomed to these considerations, that the difference in point of security between gold and paper as a circulating medium of conventional value, is not so much in favour of the former as their habits induce them to imagine. There is indeed in favour of paper this most material distinction, that although, unlike gold, its quantity may be indefinitely increased, so also, unlike gold, its quantity may be indefinitely diminished; no conventional authority can stop the influx of gold; but national convenience can always limit, at its will, the quantity of circulating

paper. The degree of security which any country may possess for the due exercise of this discretion, is a separate question, to which we shall hereafter advert.

Having endeavoured to explain the relation between gold and paper, as measures of conventional value; it still remains to shew in what manner has arisen the difference in their current value, which at this time unquestionably exists. Before such difference was visible, the balance of trade was at least not against this country; in using a term so often misapplied, and so little descriptive of the facts which it involves, as the *Balance of Trade*, it is proper that we should distinctly explain the meaning in which we intend to employ it. When the amount of commodities imported exceeds the amount of commodities

exported, the difference must be paid either by bills of exchange, or by the precious metals; and the difference thus payable is usually denominated the balance of trade against a country. It is not here intended to examine the erroneous impressions conveyed by the term, but to explain its naked meaning, in this its popular acceptation. Since the issue of the Milan and Berlin decrees, the Orders in Council, and the Non-Intercourse Act of America, the foreign commerce of England has been so circumstanced, that purchases on the Continent have been made chiefly by gold, and in the United States of America by gold only, or American Stock. Under such disadvantages England cannot conduct her foreign commerce in the usual mode by Bills of Exchange. She cannot export commodities as a

fund to pay for imports in return: the precious metals alone will answer her purpose: as she cannot procure bills of exchange, she must have recourse to that alone which can answer the same purpose,—to gold,—to the precious metals. Is it then a matter of astonishment, that while the balance of trade is so excessively against us, and the operation of a bill of exchange can be effected only by the application of gold, that this metal should rise in value above its former rate in circulation relatively to paper? Is it strange, that when we have payments to make to a country whither we can send no commodities to meet them, that this our only bill of exchange should bear a premium? Under this view of the subject, will it not, on the contrary, be manifest, that gold now operating as a bill of

exchange, and bearing a large premium, has left paper at the value with regard to commodities which it possessed before the existence of the premium? To place this fact in a more unquestionable point of view, it is only requisite to look at the state of the American funds relatively to those of England. The sect of gloom and grievance, who scatter portentous hints on the subject of depreciated paper and base coins; or so fondly contemplate the commercial ruin of their country, as to offer up their prayers for the success of the means devised by the enemy of the world for its accomplishment; even these politicians, in all the inadvertence of rash assertion, will scarcely affirm that our Funds are surpassed in credit by those of America. Yet while we are precluded by the Non-Intercourse Act

from exporting our commodities, American Stock relatively to ours bears a high premium: we have payments to make in that country which, under the stated prohibition of our commodities, must either be discharged in the precious metals or in American paper. The demand for American paper thus created enhances its price in the market, in the same manner that the demand for gold, as a substitute for bills of exchange on the Continent of Europe, has enhanced its price in the market. It would not be liberal towards Lord KING, whose rank in the state ought to shield him from the imputation of unworthy motives, to admit the impression, that, in giving authority and impulse to a popular error, he was aware of the practical desolation which he was about to inflict on the community. It will be

more charitable to infer, that having obtained some reputation as the advocate of a system, his habits had rendered him slow to the perception of facts which had a tendency to shake the doctrines of his sect; and that when he rejected paper, and demanded gold from his tenants, he at that time, in common with many able and respectable men at later periods, had not distinctly perceived a fact, which we trust is no longer disputable; namely, that gold had started from its conventional value as a circulating medium, in assuming a higher value in the capacity of a bill of exchange bearing a large premium.

Before dismissing the subject of Lord STANHOPE'S Act, we must express an anxious hope that its provisions may be speedily extended to the Sister Kingdom, where it is notorious that

evils, which were only apprehended in England, have been carried into effect, and continue to be practised, under circumstances of aggravation, which probably never entered into the contemplation of the Noble Author of the notable project which has been discussed.

But for the purpose of confirming the conviction, that the actual difference in the value of gold and paper has arisen from the new capacity and higher value thus assumed by gold, and that paper still retains its former value in relation to commodities; it may be satisfactory, by a practical reference to articles of consumption, to shew that their prices generally continue such as to be consistent with an undiminished value in the present state of paper. Our enquiries on this head have had a tolerably extensive range; and we

feel entitled to state, with some confidence, that, considering the constant operation of our Funding System to increase the amount of taxes, and consequently of prices, the rates at which articles of consumption are now sold are not higher than is fairly consistent with the unremitting influence of such a cause. We naturally confine ourselves to those articles of consumption, whose current rates have the most direct reference to labour; as the various combinations which influence the prices of commodities at large are too numerous and intricate to be examined with much effect. We do not rest much on a fact, which we believe to be unquestionable, namely, that the paper wages of labour itself, that is to say, of labour in husbandry, have not generally risen since the scarcity of gold;

because we admit that the influence of a change is more slow in reaching the wages of labour, than the price of commodities. We merely advert to the fact, because, while concurring with the great man who proposed labour as the *best* measure of value, we are compelled to add our regret that no practically unexceptionable measure of value has yet been discovered. Leaving it then to the reader to attach the degree of importance he may be disposed to assign to the nearly stationary rates of agricultural labour within the last three years; we proceed to observe, that the paper price of butcher's meat, which is perhaps less liable to fluctuation from incidental causes than any article of consumption, has within the period since the Non-Intercourse Decrees of our enemies began to ope-

rate, risen six per cent at the most; while the difference between gold and paper within the same period has reached the amount of twenty-five per cent. at the least. If paper had been actually depreciated relatively to commodities, butcher's meat must, within the time stated, have risen twenty-five per cent.: and that it has not done so, is a conclusive proof that paper and commodities have preserved their relation to each other, while gold has materially changed its relation to both.

It may be proper incidentally to observe, that the alarm which has been taken regarding the excessive issue of the paper of Country Banks rests on nearly the same basis as a similar apprehension regarding the Bank of England. For while gold formed the basis of the internal currency, these Banks were obliged to

keep in their coffers a sufficient proportion of that coinage, to meet the return of their paper which was convertible into it on demand: so also are they now obliged to keep in their coffers a sufficient proportion of Bank of England notes to meet the return of their paper, which is convertible into them on demand. The capital which was before applied in procuring a proportion of gold, is now applied to procure a proportion of Bank of England notes; and it is familiarly known, that it is contrary to the *interests* of a bank to issue a quantity of notes which exceeds the due proportion to their capital. If persons ignorant of the principles of banking have, from an erroneous impression of these relations, issued notes to an unwarrantable extent, and become bankrupts accordingly; such failures are not to be ascribed to a

difference in the denomination of capital, but to errors which are followed by their own appropriate remedy.

As in consequence of the virtual exclusion of gold from the circulation of the country by legislative authority, circumstances have materially changed since Mr. HORNER's Committee recommended that cash payments should, after a fixed period, be resumed by the Bank, and since the period that others as strongly recommended that our paper currency should be called in to an extent calculated to make it rise to the value of gold; the considerations which we have submitted to the reader's judgment will probably have prepared him to conclude, that neither of those measures could now be adopted, without effects the most ruinous; or rather, that they are both either broadly imprac-

ticable, or utterly incompetent to effect their proposed ends.

With regard to the first; should the Bank be compelled to make payments in cash at any period antecedent to that in which the balance of trade shall cease to be against us, the coinage would necessarily find its way out of circulation, in order to assume the office of foreign bills of exchange; and in its flight would reproduce the distinction between payments in gold and in paper, which it has recently been found expedient to extinguish by legislative interference; and, as a necessary and early consequence, a second Act of Restriction would become indispensable, under circumstances calculated to excite more general distrust and alarm.

While with regard to the second, to decrease the quantity of paper in

circulation, while the metals are necessarily employed in performing the office of bills of exchange, could by no possibility withdraw the gold from this more important function which it is exclusively qualified to perform: the only effect of such a measure would be, not to change the quality, but to lessen the quantity of the whole circulating medium, in the exact proportion that the paper should be diminished; and thus to impede, or paralyze, the course of commerce. No diminution of paper could, under such circumstances, either recall a single guinea, or reduce its price; for so long as gold bears the premium which it does at present, in consequence of its filling an important commercial office which paper can not, so long must it, under any limitation of paper bear the higher price.

But says the objector, admitting these statements to be founded, is it intended seriously to support the opinion, that there is no inconvenience in being limited to a paper currency in this kingdom? Can it be denied, as a matter of *fact*, that we have lost all our circulating *gold*, an article of unquestionable value; and have nothing to supply its place but *paper*, an article intrinsically of no value at all? We reply by admitting the *fact* in its broadest extent. But it is essential to observe, as an explanation of that fact, that gold has been taken out of circulation for the purpose of being converted into capital, in the purchase of foreign goods, an application which we never should have thought of, had it not been for our advantage; every purchaser is aware, that he cannot retain both the value paid, and the value received; he

has his option to retain one, but not both; he has exchanged gold for capital; the gold certainly has disappeared; but not the value which he received for it. That BUONAPARTE has at a great sacrifice, affecting his own finances much more seriously than ours, exposed us to all the inconveniences of an adverse balance of trade, cannot be denied; but while he has compelled us to part with even our circulating gold, or abandon the advantages of foreign commerce, it is both unjust and inconsequent to ascribe these effects to our paper currency, which, instead of aggravating the evil, is obviously relieving it, by supplying the place of gold, which, with our eyes open to all the imaginary mischief and real convenience of the measure, we are daily sending away. To complain of the defects of a paper currency under

such circumstances, and to treat with contumely the offices which it performs, is as puerile and capricious, as to complain of hunger, and spurn the hand that offers food. If the overgrown power of an upstart despot has reduced foreign commerce to its present state, an order of things so unnatural, so forced, and so adverse to the interests of the whole human race, cannot in these days of light be reasonably expected to be of very long duration. The liberal and enlightened observer may already remark the remote symptoms of a favourable change; and the free and unbroken spirit of the British people, if left to its own unbiassed operation, is fully prepared to wait, in an attitude of firm defiance, for the return of that state of foreign commerce, which being reciprocal shall leave the balance in our

favour, and, by restoring the use of foreign bills of exchange, bring back the precious metals to the value which they have left, and thus restore them to circulation.

Before closing these remarks, we are desirous of throwing out for speculative consideration two questions which have been suggested to us by the course of this enquiry.

1st. If we have satisfactorily shewn, that an exclusive paper currency within the kingdom is far from producing the portentous evils which have been imagined; is it not impolitic to continue the restriction on the exportation of gold, as equally unwise in principle, and inconvenient in practice? Unwise, because it must ever be derogatory from the dignity and wisdom of a Legislature to prescribe by authority that which no authority can

enforce; and inconvenient, because it encumbers with risk and expense operations of exchange, which will at all events be performed, and ought for the public benefit to be performed at the least possible charge: and as a part of the same question, is it practicable to combine a modified freedom in the export of coin with the important financial measures which relate to our military operations abroad?

2d. May it not be questioned, whether convenience or inconvenience would preponderate, in prohibiting altogether the use of gold coinage at a *forced* rate of exchange within the kingdom as heretofore, even after foreign commerce may have returned to its wonted channels, and the Bank shall have resumed its payments in specie? Under the order of things which this question supposes, all coins

would find their own level according to their real value; bills of exchange might be employed, and be payable at the Bank of England, under rules in some respects similar to those formerly in use at the Bank of Amsterdam, by paper, by bullion, or by coins, as might be most acceptable to the receiver. Bullion and coins, being thus commodities in the market, would answer the same purposes of foreign commerce as heretofore; and would not be liable again to the groundless scandal of depreciating the circulating paper of internal currency.

It still remains to examine the danger to which we have cursorily adverted, of an incautious, or if the objector will so have it, a corrupt excess in the amount of our paper currency. That such an excess has not hitherto arisen, we trust has been

satisfactorily shewn; that it may arise, is an inference chiefly deducible from apprehensions, of which the fallacy has already been exposed. But it will be no more than candid towards the authors of the doctrines we oppose, to recapitulate the chief arguments which lead to those deductions, before we offer a very brief summary of our own reasons for an opposite conclusion.

It is urged by the advocates of these apprehensions, that the power of BUONAPARTE is so well established, and his ambition so inordinate, that no calculation can be reasonably formed of any definite termination to the difficulties which now embarrass foreign commerce; and with such a prospect in view, the increasing evils of an exclusive paper currency must be necessarily regarded with alarm: That while we had a mixed currency,

consisting of gold and paper, our foreign conquests and extended commerce poured into England an abundance of gold and silver, beyond the amount required for internal circulation, and ornamental manufacture; which surplus found a ready and profitable egress from the kingdom in the shape of bullion or coin for the purchase of foreign commodities: That these successive exports of the surplus quantity of the precious metals prevented any material depreciation of our currency, an evil which was farther obviated by the difficulty of producing in any country a large excess in a circulating medium which bears a respectable intrinsic value: That, unfortunately, this excellence attaches not to a paper currency, which may be fabricated to an indefinite extent at little expense; the existing Adminis-

tration being, according to these apprehensions, sufficiently profligate to consider the public interest less than its own; and the opulent Corporations and individuals directly interested in an excessive issue of paper being precisely those, who, from a feeling of reciprocal accommodation, possess the means of undue influence; that they will accordingly exert it to obtain the silent sanction of Government for an excessive issue, because by such issue they fatten on the public spoil: The result of all which must be, that as the paper cannot find its way out of the kingdom for the accomplishment of *any purpose*, its inordinate quantity will expose it to depreciation relatively to commodities, by which the community, but Stock-holders in particular, will be subjected to the double loss of receiving their income in a depre-

ciated paper, and of suffering from the diminished command over the conveniences of life, arising from the operation of the funding system.

We will admit, without reserve, that an exclusive paper currency must *abstractedly* be considered liable to the dangers which have been stated, inasmuch as human nature is not abstractedly exempted from either error or crime; but practically, we trust that there are abundant grounds for the opinion, that the predicted excess is exceedingly improbable, and that there are equally abundant means to relieve us from its inconvenience, should it ever appear. Commerce, foreign as well as internal, involves in its nature and essence reciprocal advantage, and this advantage although most immediately is not exclusively possessed by mercantile men, but is sensibly dif-

fused, in a thousand nameless shapes, over every varied class of the community; and operating thus powerfully on the interests of the whole human race, cannot in any country, and more especially in a free country, for any lengthened period, be subjected to the wanton violation of stupid or capricious power, pursuing a partial, mistaken, and temporary advantage. Those who most loudly complain that the voice of the community cannot be heard, are perpetually disproving the fact, by incessantly compelling us, before we have forgotten the last lamentation, again to listen to the twice-told tale. Let it however be admitted, that with an exclusive paper currency some excess in quantity should occasionally appear. It must necessarily be the result either of *inadvertence* or *design*, and we shall consider the two

cases in their order. If the result of inadvertence, its amount can scarcely be excessive; and although it cannot, like gold, find an outlet in foreign commerce, and be converted through its medium into foreign and ultimately into internal capital, yet, in the busy spirit of England, her internal speculations would increase with her means, and the supposed excess of circulation, taking the shape of capital, would swell the amount of commercial matter, and require an augmented currency to keep it in motion; or if not so required, it is obvious that its amount might as easily be reduced, by the same power which sanctioned its augmentation. But whoever impartially observes the actual operation of passing events, will be satisfied that there is still abundant room for the employment of a largely augmented

capital in the practical application of new discoveries, and, above all, in reclaiming and improving the soil of the united kingdom, even when limited in her foreign commerce. It is not real so much as fictitious capital that complains of restricted means of employment. Thus much with regard to an inadvertent excess.

With respect to an excess of design, involving of course motives the most unworthy, and objects the most venal and profligate, the extent of the danger may perhaps be illustrated, by examining the temper and the occasions which generate the imputation of such motives. Following this guide, we shall find the supposed design to be a rich and productive source of apprehension, for that morbid habit of mind which, in certain circumstances, delights in grievance more than

in redress. It were indeed an object of no ordinary curiosity and edification, to trace the various aberrations of this mental disease, which, vaccilating in its paroxysms according to the seat it occupies, alternately wanders in elysium, dreaming of exhaustless resources, or breathes the sickly horrors of modern romance over all that it approaches. Its earliest and most unequivocal symptom is to be found in feeding the distinctive English appetite for inevitable ruin, with the ugly and obscene phantom of a corrupt Representation of the people: because, while choice is free, it may be influenced, and while men are not angels, it may be influenced by unworthy motives. Under the impulse of these aberrations, authority is a standing grievance; because while the British Constitution has (wisely perhaps, but

notoriously) denied to its executive branch the degree of *direct* power requisite for conducting with effect the ordinary operations of Government, it must necessarily seek to obtain *indirectly* what has been *directly* withheld; and because (as the prophetic spirit knows,) that support cannot be obtained on pure and independent grounds, the executive power must seek to obtain it in the only way in which it can be procured. Such reasoners who retort on authority the vices which obstruct authority, can find no difficulty in professing to believe in its sanctioning, without much remorse, an interested and corrupt excess of paper currency.

For the consolation of less disturbed and more healthy intellects, we proceed to observe, that there is no man, nor body of men, so largely interested

in the prosperity of the kingdom, as the very persons who are thus supposed to be leagued together for its ruin. If an Administration were influenced by the exclusive consideration of retaining their places, that exclusive end would be most effectually promoted by a prosperous course of measures: and the insatiable opulence, which is supposed to be confederated with them, would scarcely find in national bankruptcy the means of satisfying its appetite for wealth. In a free state the bad passions of men, whether in or out of power, can alone excite them to be accessary to the ruin of their country; their most obvious interests will invariably prompt them to seek its prosperity. This powerful source of action, pervading the whole fabric of the British Constitution, identifies the interests of the Legislature in all

its branches with the interests of every class of the people. The advocates of a different order of things, who affect to believe that this beautiful fabric has already been dissolved; who agree among themselves in nothing but the necessity of change, without determining what that change shall be; who recommend a search for order through the medium of confusion; even these apostles of anarchy have not been able to shew in any portion of the really substantial fabric which they wish to subvert, any interest distinctly opposed to that of the public weal. It is worse than puerile, then, to state as a ground of fear, that Government, while guarding us in other respects, should deliberately introduce a particular evil of general influence, or, if it imperceptibly occur, should not employ all practicable means for its removal:

that urged by every human motive to be generally right, it should go wrong without a motive in a particular case. To such apprehensions we deem it needful to oppose no farther or more serious observation than that, as they are groundless, so they may be endless. For the security and improvement of our interests we have the collective wisdom of the nation. A farther security is inconsistent with the imperfect constitution of our being; for whatever may be the tendency of our public opinions, whether to despondency or to confidence, we cannot evade the final necessity of resting all our political hopes upon human discretion.

Printed by Richard Cruttwell,
St. James's-Street, Bath.

LETTER

TO

WM. ROSCOE, Esq.

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LETTER

TO

WM. ROSCOE, Esq.

OCCASIONED BY HIS LETTER

TO

HENRY BROUGHAM, Esq. M.P.

ON THE SUBJECT OF

PARLIAMENTARY REFORM.

BY JOHN MERRITT.

"Ἐνδέχεται δ' εισηγεῖσθαι τινας νόμων λυσιν, η πολιτειας, ὡς κοινὸν ἀγαθόν. *** ἄλλον δε τρόπον ἐπισκοπουσιν, ἐυλαβείας ἄν δοξειεν εἶναι πόλλης. "Οταν γαρ ἦ, τὸ μὲν βέλτιον μικρὸν, το δ' ἐθίζειν ἐυχερως λύειν τοὺς νόμους φαῦλον, φανερὸν ὡς ἐαλέον ἐνίας ἁμαρτίας καὶ τῶν νομοθεῖων καὶ τῶν ἀρχόντων. Οὐ γὰρ τοσοῦτον ὠφελήσεται κινήσας, ὅσον βλαβήσεται τοῖς ἄρχουσιν ἀπειθεῖν ἐθιζθείς."

Arist. Polit. Lib. 2. cap. 8.

LIVERPOOL:

PRINTED BY WRIGHT AND CRUICKSHANK;

AND SOLD BY THEM, AND BY LONGMAN, HURST, REES, ORME, AND BROWN, PATERNOSTER-ROW, LONDON.

A

LETTER, &c.

SIR,

I was informed, a few months since, that some communications had taken place between yourself and Mr Brougham on the subject of Parliamentary Reform; and in common with many others, I received this intelligence with much satisfaction. Mr Brougham is known to the world as a politician of a comprehensive and vigorous intellect; of singular perspicacity in discerning objects of real utility, and strenuous in his endeavours to promote every plan of practicable improvement. He is also, as I understand, the reputed author of a production,* which appears to me to be by far the best, if not the only successful attempt which I have lately seen, to state this question with any thing like the sobriety of philosophical precision. Yourself I believe to be, alike from constitution

* See review of Cobbett's Works, Edinburgh Review, vol. x.

and character, averse to all extremes, and a sincere friend to public tranquillity, as the only security for private happiness. From the liberal and unrestrained intercourse of such men, it was to be expected that the subject would receive dignity as well as illustration: that in such hands it could not fail to be rescued from the contempt into which it has most undeservedly fallen, from having been so long the topic of party pamphleteers, and the theme of vulgar declaimers. With these expectations, I have read your letter to Mr Brougham, and I confess it is not what I should have looked for, as the result of your impressions after such a discussion. Concurring, without hesitation, in the opinion commonly entertained, as to the general correctness and uniform benevolence of your public principles, I yet venture to state, that in this instance, you appear to me to have adopted too hastily the popular opinions on this subject, and to have overlooked the true points at issue. You seem to consider the scheme of reform which you have so eloquently proposed, as an improvement, of which the benefits were too obvious to require proof; and to have rejected or contemned the opinions of many eminent men, whose objections you were certainly bound to recognize, if not to refute. I have attempted to oppose your opinions, from a conviction that the deserved influence of

their author and their own intrinsic plausibility, will not fail to diffuse through a very large class of persons, what I conceive to be erroneous notions on a question of the highest national importance.

It must be merely from want of ability, if I do not treat the question with that entire absence of party-spirit, which is, I am satisfied, above all things essential to the very nature of the inquiry. That the spirit of party is indispensable to the support of such a constitution as ours, perhaps essential to its very existence, I should not only admit, but contend. It is at the same time the most powerful incentive and the most invincible obstacle to every plan of improvement. It mixes itself in every discussion, and by driving both sides to extremes, *precludes all chance of attaining that* "due mediocrity" in which the perfection of all political as well as moral wisdom has been held to consist.

It has been said by a great philosopher, that "in the study of politics it very generally happens that whatever is theoretically true, is practically false;" because, he observes, most political theories proceed on the supposition of certain qualities in human nature, the existence or the extent of which being falsely assumed, whatever is built on such a foundation is necessarily unsound. Without giving an entire assent to this seeming paradox, it may

safely be assumed as a postulate, that there is no science in which first appearances are so often fallacious. None in which the reasonings drawn *a priori* from general appearances, differ so widely from those deduced *a posteriori* from the evidence of facts: none in which the ultimate results will defeat so often the intentions of the original plan. This consideration, if suffered to operate to its full extent, would produce a degree of care and indecision, wholly inconsistent with the ordinary exigencies of human affairs: but it certainly inculcates the necessity of deliberation when delay is not dangerous, and of distrust where experience is defective.

The method of induction, which has done so much for the physical sciences, might perhaps be employed with equal success in the study of politics; but unhappily we are here deficient in facts, and experiment is generally dangerous and often impracticable. In the records of nations, we are the only great people who have ever possessed a free government of sufficient strength and security to hazard frequent attempts at improvement. In this noble career we have already far outstripped all former competitors in the race: we are now on a journey of discovery in political science, and have entered far into the *terra incognita* of that boundless region.

Hence it has been asserted, that there are in politics, as in morals, very few axioms which can be considered as wholly incontrovertible. But, amidst this depth of uncertainty, I am quite willing to accede to the proposition in which you and Mr Brougham so entirely coincide, "that some reform is desirable, and that the more the constitution of Parliament can be improved, the better." In this sentiment, you justly observe, all the friends of reform will readily agree. The latter part is indeed a mere truism, and perhaps the former is scarcely less so; since it may be safely affirmed that no government will ever exist, of which it may not be predicated that it has need of reformation. With these axioms, therefore, I suppose all the advocates of reform, amidst their endless diversity of means and ends, would readily concur; and even the most sturdy innovator must have more zeal than knowledge, if he sees in them any cause of alarm. But unhappily in advancing thus far, we have scarcely proceeded a step, and we already begin to diverge in every variety of direction.

Mr Brougham has mentioned several specific objects, to which he intends to direct his attempts at reformation. These he thinks "quite sufficient to begin with," and "enough to satisfy the most sanguine reformer." To me, I confess, they ap-

pear sufficiently adventurous. That he should have been accused of attempting too little I could never have imagined. He certainly cannot be suspected of venturing with too timid a step into those perilous paths where it is so easy to err, and where error is so often irretrievable, and so often fatal. He is disposed to touch with no very tremulous hand, that complicated moral machine, of which, unlike the physical machine, we possess no fixed laws to estimate the force or to calculate the results. No plausible objection, however, can be made to Mr Brougham's scheme of reform, except perhaps, that he is attempting to repair too many breaches at the same time. The objects to which he intends to direct his efforts could not have been more judiciously selected.

This plan of procedure you think not only ineffectual but impracticable, and your own propositions are brought forward with that distinct and unhesitating candour which has characterised the whole of your public conduct. The imputation of "*omnia latent in generalibus*," which has so often been charged on the reformists of the day, has no reference to your simple and specific project. Perhaps its simplicity is its most objectionable feature. The rage for simplifying is said to be the great error of modern theorists, and it is not at all surprising that ingenious men should be captivated

by a quality which is apt to satisfy the understanding no less than it delights the imagination.

In treating on the art of government, this "*mentis gratissimus error*" is particularly apparent. Many persons in the direct benevolence of their views, and in their summary projects for the happiness of the human race, are apt to despise the complicated machinery of government, as not only useless but injurious. The springs and balances, without which refined statesmen assure us that the great machine could never perform its functions, they look on as state craft and needless subtlety: only wanted when governors mean to deceive, and the people are meant to be abused. The best possible form of government they believe to be a matter of easy attainment and obvious application: requiring only to be set about with plain common sense; with good faith and upright intentions. It would be well if any examples in support of this beautiful theory were to be found in the history of mankind. Unhappily we are taught, in that school of wisdom, that the art of governing a nation is that in which mere good intentions will effect the least, and in which the purest zeal, without proportionate knowledge, is the most certainly pernicious. Experience informs us, that the attainment of a good government, like all other valuable acquisitions, is tenta-

tive and gradual: obtained only by length of time, repeated efforts, and fortunate occasions. To distribute to all the individuals of a large state the greatest portion of civil liberty, and the best means of private happiness, consistently with public quiet and national security, is found, on experiment, to require a more consummate skill and deeper contrivance, than any other work of human ability.

Your plan of reform, very naturally embraces two objects: "first, every representative should be fairly and impartially returned by the voice of the people; and, secondly, when returned, he should not be placed in the way of being corrupted by the crown." In order to accomplish these objects in their full extent, you conceive "the right of voting should be extended to all; that is to all who, as householders, or heads of families, contribute to the exigencies of the state, as well as to some other descriptions of the community; and all persons holding places and pensions should be incapable of being elected, or if they afterwards accept of places, should absolutely be deprived of seats in the house." This, you observe, "you should consider as a full and substantial reform; and yet *this is so far from being an alteration in the constitution of the country*, with attempting which the reformers are so frequently charged, that it cannot in fact be considered as an alteration

in the House of Commons, which is confessedly representative, and which representation this mode of reform is not intended to destroy, but to preserve; not to deteriorate, but to improve, *by accommodating it to the present state of the country*, and rendering it capable of performing the ends for which it was intended."

To the view of abstract consideration, this alteration appears perfectly rational, and quite commensurate to its objects. It seems to strike at the root of almost all the existing evils. It appears to concur with the original design of those who first meditated the British constitution. Nor should I have the presumption to affirm, though I think the supposition improbable, that its ultimate effects might not be beneficial. Of an untried order of things, where experience affords so little light to guide our conjectures, it is not very easy to foretell the issue. But I have not the least doubt that such a change, however it might leave untouched the forms of the constitution, would *alter essentially its entire character and actual operation.* I am of opinion that it could not possibly succeed *in improving the representation, by accommodating it to the present state of the country;* and I am afraid it would hazard the introduction of many unexpected evils, of unknown and therefore of incalculable magnitude.

These opinions, I am aware, will appear to you sufficiently audacious, and perhaps wholly untenable. It is the purpose of this letter to offer a few considerations in their support.

Under the first head of inquiry, it is necessary to take a view of the process by which the members of the House of Commons are returned to Parliament: and here it must be confessed, that first appearances are most inauspicious. A certain portion of the members is nominated by the direct interference of the executive power, which of course takes care to return only such men as are devoted to the views of the existing administration. A considerable part is appointed by a sort of appropriation attached to the estates of a certain number of Peers of the realm and powerful Commoners. Some of the remainder are chosen by small corporations, in which the voters amount to a number so inconsiderable, as from two to five hundred. A great part of the residue are elected by the populace of large towns, where the most vulgar bribery, and the lowest intrigue, are openly practised, and where any thing is attended to but the substantial merits of the candidates. A few indeed are returned by the freeholders of the different counties: but even here the same influence is apparent, and the many are almost uniformly directed by the few. The political philosopher, to whom

this was related in his closet, would "despair of such a republic." In a structure thus raised, he would expect to see, as a matter of course, all the defects and all the incongruities of its fabricators: he would expect to find in it as little of utility as of grace and proportion.

Such would inevitably be his impression; and yet, as Dr. Paley observes, the effect of all reasoning upon the subject is to diminish this impression. And here the maxim is strikingly exemplified, which has been before insisted on in this letter, that in practical politics the specious and the useful are frequently not only distinct from each other, but contradistinct. The result of a close examination into our representative system, is to reconcile us to its external deformities by its actual efficacy. It will be found that its worst qualities are its gross disproportions and seeming inconsistencies.

Stability and security are the first requisites in every government; for till these are obtained, there is no chance of acquiring any steady or regulated liberty. The condition of that nation is little to be envied, in which the government is occupied rather in devising expedients for its own preservation, than in contriving regulations for the public good. Intimidation and restraint will be among the foremost of these expedients, for

they are the natural resources of power, and especially of power which has but little confidence in its own strength. Tyranny itself becomes mitigated when it is once firmly established. No man will make improvements in his estate while his title is dubious, and no government will make many advances towards perfection, till it has secured the acquiescence of its own people.

It is admitted on all hands, that this stability and security in any government rest chiefly on opinion:—that is, on the opinion generally entertained of the power, right, or dignity of those who are in the actual exercise of the supreme functions of the state. In a representative government, therefore, those delegates will naturally stand the highest in the opinion of the people, who possess the greatest share of popular respect in the ordinary relations of society. This class of persons, which has been called, with sufficient propriety,* the natural aristocracy of the country, is alone adapted to represent the power of the people, for they only possess the sanction of public

* Many of these leading points are stated with admirable precision and perspicuity in the Edinburgh Review, vol. x. p. 386.—We are sorry to observe, that the later speculations of that eminent Journal on this important subject, discover much less of the philosophical spirit, and a much greater tincture of the spirit of party.

opinion. The distinctive marks of this class are sufficiently apparent. In the British nation there are now no privileged orders whose powers or immunities are so marked as to disturb the usual course of things, and the natural sources of distinction soon find their level. We are a nation above all others commercial. More persons in this country are occupied in the pursuit, and succeed in the attainment of wealth, than in any other with which we are acquainted. That which, with ourselves, is the chief object of regard, will be the chief object of reverence in others. Property, therefore, possesses the first and most extensive influence. We are, secondly, a nation possessing an ancient monarchy, and an old hereditary nobility. With us the subordinations of society are carefully preserved and distinctly defined. Next to wealth, therefore, rank will hold the highest degree of estimation. We are, thirdly, a nation possessing an enormous revenue, unexampled power, extensive establishments, and of course a great number of powerful, dignified, and lucrative offices. The importance bestowed by these offices, may be reckoned the next in the order of public precedence. Lastly, we are a nation eminently free and highly enlightened. Character, therefore, and talents, particularly popular talents, such as eloquence, address and deportment, will be highly

valued. The national representation, in its sound and healthy state, must be compounded of these classes in the order of their relative importance, or it will want that strength and stability, without which no government can steadily carry on its work. If it was taken entirely from the last of these classes, which some persons might think desirable, if it were possible, its ordinances might perhaps exhibit more wisdom, but would never command that sort of public obedience, which is only valuable when it is spontaneous and habitual. That government which, in its very formation, counteracts the inveterate current of popular prejudice, is erected on a foundation of sand.

It cannot, I think, be denied, that the actual state of our representation is strictly in consent with this order of things. Wealth, rank, office, and talent, are mixed in the lower house in that proportion, which, whatever was the mode of election, or the number of electors, would inevitably result from popular suffrage. The strange anomalies existing in the rights which confer the elective franchise, as well as in the process and the means of election, have, on the whole, perhaps, a favourable effect. They certainly introduce into the senate a correspondent variety of characters. They secure to every rank and order of men, a representation of their peculiar sentiments and

interests. They are favourable, perhaps, to the introduction of that order of men, whose admixture in the mass, serves to enlighten, refine, and liberalize the whole; that class which is more distinguished by the gifts of nature than of fortune. Men of eminent talents and high acquirements are not often either much distinguished or much valued by the multitude. If they estimate talents at all, it is only those of precarious value, such as eloquence, address or deportment. On the other hand, a nobleman or a wealthy commoner, will be anxious for the sake of his private credit and public importance, to nominate a man of distinguished abilities for his dependant borough, and such men are, in general, actually found to be thus appointed.

We find then that our representative system, the defects of which undoubtedly strike every inquirer with surprise and disgust, offends more by its want of unity and proportion than by its substantial faults. It is deformed rather than noxious. The materials are indeed discordant and the instruments seem ill-contrived, but yet we find when the work is done, that it is done effectually. It will perform its uses as well as though it had been executed by line and rule. On the present plan, if plan it can be called, the same body of men is sent up to the national senate, which probably would and certainly ought to be returned, under

any extension or modification of the rights or freedom of election. They are selected from all that is conspicuous in wealth, considerable in rank, high in office, or eminent in talent. From that body of men who naturally direct the opinions and influence the conduct of the classes beneath them, and whose interests, at the same time, are the most immediately identified with the welfare of the state.

In the choice of representatives, we cannot propose to ourselves more than the alternative of two objects: either to select from the mass of the country the greatest assignable portion of its wisdom and virtue, and then commit to this delegation the absolute and unconditional trust of the national government; or to choose such men as will merely speak the voice of their constituents, and act from their directions. The latter plan would constitute a pure representative democracy. The other is more recommended by the experience of history, and more congenial to the spirit of the British constitution.

This, then, being premised, it may be asked, where are we to seek with the greatest probability of finding this maximum of wisdom and virtue? certainly among that class where there is the greatest certainty of a careful education: the greatest chance, therefore, of a sound understand-

ing; the greatest regard to honour and reputation, and the greatest stake in the good of the community. Wisdom indeed is here the great disideratum, for in state affairs, almost all the mischief is done by honest imbecility. If men in power imagine they have any interests exclusive of the welfare of the people whom they are appointed to serve, their folly will soon correct itself.

Even if any order of men distinct from these natural *optimates* of the country, could safely exercise the office of representative, where else are we to look for the qualifications of a senator with any hope of success?

In this instance, there is a happy coincidence between the reason and the necessity of the case which does not always happen in human affairs. Those men, who alone are competent to exercise the delegated trust of government with safety and effect, are those among whom the capabilities for the task are the most likely to be found.

But you will perhaps say, "admitting all this, would not the alterations I have proposed, ensure a better selection of individuals from the classes which you have enumerated? Would it not tend to procure the return of a greater number of men of virtuous and independent character?" That these alterations could possibly operate such a change, may, I think, be very reasonably questioned.

The proposed improvement in the mode of election, would, I imagine, embrace two particulars, though one only is mentioned in your letter. First, the extension of the right of vote to all householders who pay taxes—and secondly, the method of voting by ballot, as practised in the United States of America. Without this last regulation the other would only open a wider door to intrigue, intemperance and corruption.

To extend the elective franchise to every master of a family, not in a state of absolute dependence, and who is so far removed from abject poverty as to be able to pay annual taxes, is a measure which seems consonant to the plainest dictates of justice and equity. The equal right of voting is supposed to be indefeasible in every citizen of a representative government, and inherent in its very nature. Such, however, is the actual state of affairs in this country; and such are the aberrations from the direct line of its theory, which the course of events has produced in the British government, that this apparently obvious right cannot now be conceded with prudence, or even with safety. The constitution has grown out of shape in its advances towards maturity, and to force it into symmetry by a sudden effort, would occasion nothing but fractures and dislocations. But though distorted and mis-

shapen, the body-politic can perform its ordinary functions perhaps as healthfully as a form of more grace and proportion. The grievance, therefore, is not pressing, and of course, we have no need to seek for violent remedies. Some incidental and collateral advantages, I admit, may probably result from the increase of voters, but I think it has already been shewn, that we cannot expect it to produce any improvement in the representative body itself. If indeed the augmentation of numbers necessarily involved a proportionate increase of reason, we might well be anxious for the change: but, unfortunately, as Montesquieu observes, reason has little to do in the choice of multitudes. "A people like this," says he, speaking of the English, "being always in a state of fermentation, is more conducted by passion than by reason, which never produces any great effect in the mind of man." Have the men who have been the most successful in gaining popular favour been of that description who are the best qualified for the task of government? In the Greek and Roman republics, is not the ingratitude of the populace towards their best and ablest citizens, the great theme on which orators and historians have delighted to expatiate? In those governments of universal suffrage, was the voice of the people ever any thing more than the voice of a few leaders?

Was not the "*appellatio ad populum*," the sure way to carry into effect the most violent, irrational and sanguinary measures? The truth is, that a numerous body of people never sit down and deliberately consider which of the candidates presented to their choice is the best qualified for the important duties he is about to undertake. They are influenced altogether by popular and superficial qualities: by engaging manners, shewy eloquence and confident pretensions; or at best, by that sort of general good character, which is very compatible with an entire deficiency in the qualifications of a politician and a legislator.—Some of the ablest and most virtuous members of parliament, have been men notoriously deficient in the arts of acquiring popular favour. Not a small proportion of such men have been the representatives of venal or dependant boroughs. The small number of individuals who nominate for such places, have some chance of making a wise and deliberate choice; but the multitude choose so seldom from any deliberate motives, that an eminent writer has observed, with some rashness it must be owned, that "he had rather have all the members of the lower house chosen by lot, than commit them to the chance of a popular election."

On the second part of the question; that which respects the method of voting by ballot, a great

deal has been written and said. The question of public and private voting has been taken up by Montesquieu with his usual conciseness, and dispatched in his ordinary tone of decision. He thinks, with almost all the professed friends of freedom, ancient and modern, that the suffrages of the people ought to be public and declared. Aware of the consequence of this practice; and convinced that when the voting is public, intrigue and influence are sure to prevail, he proceeds to justify what he knows cannot be avoided. He affirms that the lower classes ought to be directed by the higher; because, as he truly says, the people, when left to themselves, are governed by passion or caprice. Be that as it may, no person who considers the effect of open elections on the English populace, would wish to see the abolition of public voting. Every one must see how much it fosters the erect port, and the independent spirit which distinguish the English from all other nations; how much it diffuses that sense of self-importance; that love of political discussion, and that tenacity of political rights which are the firmest securities of national freedom. An elector now feels within himself a sort of incorporation with the government of the country: he feels himself a part of the system, and of course interested in its conservation. Take away the publicity of

the vote ; the respect which it procures him ; the importance which it gives him ; and the dignity in which it exhibits him, and you take away nearly the whole of its intrinsic value. These are the grounds on which an extension of the elective franchise is chiefly desirable.

The instance of America has been often mentioned as the proof and the example of the advantage of voting by ballot. It is certain that the elections, in that country, are conducted with a degree of quiet and celerity which contrast very forcibly with the protracted tumults of an English election. But this seems to be the principal advantage which can be brought forward on the side of America. I have never heard it denied by any person who had impartially observed the state of that country, that the congress of the United States contains a far less proportion of the abstracted sense and integrity of the nation, than the parliament of Great Britain. What is still more material, it contains less of the natural aristocracy of the country. It was the want of this which ruined the first national assembly of France ; and perhaps the want of vigour and effect which are sometimes observable in the proceedings of the American legislature, is to be ascribed to the same cause. It does not seem to possess, in the requisite degree, the habitual respect and obedience of

the people. At any rate, we are quite sure that the supposed improvements in their plan of election have not produced any correspondent amelioration in the wisdom or virtue of the electors.—In the selection of candidates no more judgment is manifested than in this country. Sometimes indeed the very man is chosen, who, of all others, appears to be the least eligible. Their secret voting does not prevent the introduction of influence and intrigue. In some instances it adds the vices of falsehood and treachery, to the evils of subornation and corruption. The numerous advantages of open voting, which induced the acute Montesquieu to prefer it, with all its evils, are entirely lost, and nothing is gained but a little more temperance in the voters, and something more of decency in the form. In the habitual tranquillity of the public mind, Great Britain has confessedly the superiority. The spirit of party, which is inseparable from every free people, rages in America with a constant and indomitable fierceness, of which even we, can scarcely form a conception. In England the elections seem to be a sort of periodical volcano, which carries off all the political ferment and combustion which have been pent up in the preceding seven years. The gradual expansion and improvement of the public mind is, after all, the only true remedy for the evils and abuses of popular election.

I have thought it necessary to say thus much in support of the opinion, that the first branch of your reform could not be expected to remove or alleviate any of the evils under which the British government actually labours. Of the danger that would probably attend the attempt to carry that part of the plan into effect, I shall say more in the sequel. At present I shall proceed to consider the second object which your proposal embraces. "That every representative when returned, should not be placed in the way of being corrupted by the crown," or in other words, "that they should not have before them a continual temptation to desert their duty."

The singular change which has been gradually effected in the British constitution, has been noticed by Dr. Paley, and other eminent writers on the same subject. This change, however, does not consist in a practical deviation from that beautiful theory which De Lolme and other eulogists of the British constitution have so ardently commended. It would be easy to shew that no such state of things ever existed. It is a substantial change in the actual government, operated by the gradual progress of the nation in riches, spirit and intelligence. This course of events has thrown a degree of importance into the hands of the people which was never contemplated, and

therefore never provided for in the early periods of our government.

Before the revolution in 1688, the King and the nobility were not, as at present, the mere "Corinthian capitals" of the state edifice. They constituted an essential part of the strength as well as the dignity of the legislature. The three estates of the realm exercised their respective powers distinctly and ostensibly, controlling, invading, or contesting the functions of each other, in a manner very remote from the theoretical perfection of the constitution, but yet in some sort of conformity to that magnificent outline. Amidst the direct and perpetual contentions of power which then took place, the Commons were sometimes retrograde and sometimes progressive, but on the whole, they were gradually gaining ground. Every effort was made by the court to keep them back, but as the importance of wealth was every day increasing, the hands of the lower house became proportionably strengthened. The revolution supervened to this state of things, and threw into their hands an immense preponderance of power. It was then no longer safe or desirable to take the bull by the horns. The haughty assumptions of the Tudors, and the "management" of the Stewarts, alternately intimidating and cajoling, were no longer practicable. The "many-headed monster" must

be led when it could be no longer driven. This is the well-known secret and spring of the great change which seems so marvellous in our eyes. Hence comes the system of influence and corruption. As we see, or at least have hitherto seen, in the commercial world, that the strong currents of trade, when propelled from their ancient courses, soon open to themselves new channels, so it is found that the love of power is not less active than the spirit of traffic. In the body politic as well as the body natural, there is a disposition, when the constitution is good, to repair breaches and right itself after disorder. The King and the Lords, finding that they could no longer preserve their due weight in the state by a separate assertion of their rights, began, like the nobles and clergy of France, to think of joining the "*tiers etat*" in their own house of assembly. This, in effect, though not in fact, has been really accomplished.

By the growing ascendency of the commons, the King's *veto;* his choice of the time for convoking, dismissing, and dissolving parliament, and many others of his most important rights, are dwindled into little else than mere forms. These once formidable privileges are grown nearly obsolete, and of course inefficient. The importance of the House of Peers is also exceedingly diminished, though not in the same proportion. The

preponderating powers of the House of Commons being once successfully assumed, began soon to acquire the right of prescription. The ancient privileges of the other two estates, when set in opposition to them were found to be a "*telum imbelle sine ictu;*" or to speak more properly, it began to be apprehended that the *ictus* might possibly be more dangerous by its rebound than formidable by its percussion. The power of the purse alone, which since the revolution had become absolute and established, was found, of itself, nearly sufficient to swallow up all the other powers of the constitution. Open and frequent opposition could no longer be hazarded on the part of the two higher estates without engendering a species of contest, highly injurious to the order and strength of the government; perhaps dangerous to its security. To permit every measure of the lower house to pass without opposition, would have been a direct surrender of their places in the constitution, and a complete immersion of two of its branches into the remaining third. Another alternative opened to their view. Though it had become difficult or dangerous to oppose the decisions of the lower house, it was found possible to influence their resolves and consequently to partake their power. The circumstances of the times favoured the attempt. The expensive wars

and heavy taxes of King William and Queen Anne, created a multitude of new offices and dependencies, which have ever since been rapidly and continually increasing. Sinecure places and pensions were also multiplied without number, and we have reason to believe that direct bribery and corruption were frequently practised, though such offensive expedients are *now* become unnecessary. All this created a mass of temptation by which the adherents of the court could be conveniently rewarded, and its opponents effectually silenced. The House of Commons then became the *arena* on which the contests and struggles of the three estates were in future to be exhibited. Any measure obnoxious to the court, which is initiated in that house, can thus be stifled in embryo. Any measure which the executive government wishes to have proposed, can be brought forward by its partizans and strongly supported. The contest then lies between those who are *influenced* and those who are not. The representatives of the King and the Peers balance their strength against the remainder of the house, and the question is decided, as the fluctuating strength of either party may happen to prevail.

This action of the Monarch and the Peers on the third estate is not felt by the Commons merely in their corporate capacity. The interference is con-

nate and elemental. It is concerned equally in the functions of the electors and the elected. The King, Lords, and Commons now unite in choosing the representatives of the people. They join in the deliberations of the House of Commons when assembled in Parliament, and the votes of that House, which commonly fix the destinies of the nation, express the consent of King, Lords, and Commons.

The separate legislative powers of the two upper estates are in the mean time sedulously guarded, and kept unimpaired in form though nearly impotent in substance. Their ostensible independence is still imposing and majestic, though their effective energy is chiefly exerted in the House of Commons. For reasons sufficiently obvious, it is very desirable that their dignities and powers should be constantly asserted, and at all times duly recognized. Their effective weight in the actual government can in no other way be maintained. The tacit compromise by which their intermixture in the lower house is admitted, would no longer be respected, if it was not acknowledged, that their legal powers are not lost, but only in *abeyance;* that they have at all times the right, and possibly the power, of reassuming their proper share in the legislature. It is recognized on all hands that they have acquired no new weight in the state; they

are only applying their original strength in a more effectual manner and in a different direction. The House of Lords has, moreover, a separate authority which is still important, though disproportionate to the overgrown power of the Commons. As a deliberative body they possess a great influence on public opinion. The questions which come up to them from the decision of the other house, undergo a new investigation and a more careful discussion. Being less occupied in party contests and financial details, their debates are more deliberate and dispassionate. If less ability is displayed they bring to the task a more undivided attention and a more patient inquiry. On the whole, the two higher branches of the legislature, in their distinct capacities, have still most important uses both for appearance and for reality. They contribute much to the *decus* as well as the *tutamen* of the British constitution.

In this way the three estates of the realm have created to themselves a series of checks and balances, unknown to the letter of the constitution and foreign to its spirit. That spirit, undoubtedly, is direct and independent; disdainful of all sinister artifices and pious frauds. It recognizes no covert proceedings, and permits no *amalgamation* of its component parts. But this fair fabric, with all its perfection, must have gone speedily to decay,

if the new expedients had not saved it from falling. These have restored its strength and equilibrium, though at the expence of its beauty and symmetry. They have even enabled the government to attain its object more effectually than before, though by a more circuitous route. It may, I think, be asserted, that at no period since the conquest, have the monarchy, aristocracy, and democracy of which the British constitution is compounded, so well preserved their due equipoise as during the present reign.

In this view of the rise of court influence, we are not to understand that it was entirely unknown before the revolution. Undoubtedly the indirect power of the crown was very considerable before that period, for the sources of influence were then open, though bearing no proportion, either in strength or number, to those which exist at present. But the necessity of employing this great state engine in the ordinary routine of affairs, seems to have been first perceived after the new settlement. Power only descends to corrupt, when it can no longer intimidate. On this principle alone, can be explained the paradox which has given rise to so much controversy, that "our corruption is a proof of our freedom." Those who endeavour to pervert our choice, acknowledge by the attempt that our choice is free.

But the generous and the candid you will say, revolt at this new *succedaneum*, as something quite abhorrent from the genius of the English people, and destructive of their national character. They will think it a degrading substitute for that independent jurisdiction of the three estates, and that direct power of reciprocal controul, which the constitution alone acknowledges. But the alternative was never in our power. We had to choose between our present government and the probable dissolution of the monarchy: or more properly speaking, we had no choice at all, for the course of events was not to be resisted. Governments are formed by occasions and not by plans. The question is not how more might have been gained, but how to make the most of what we actually possess. The new system is not, however, without its advantages. By keeping the collision of the three estates out of sight, and by carrying on their contests underground, a degree of smoothness and order is spread over the aspect of government, quite unknown in the earlier periods of our history. At all events this system is established; the whole machinery of the state is adjusted to it, and it cannot be displaced in any moderate time or by any sudden effort.

From this slight survey of the present state of the British parliament, it may be seen that time

and chance will operate important changes in government, as surely, though far more quietly, than large armies or national convulsions. A new order of things has grown up amongst us; it has gradually settled into habit, and mixed itself with all the minute ramifications of state policy. It is now proper to inquire a little more minutely into the effects which would probably result from any sudden attempt to force the actual practice of government to quadrate with its perfect theory. You, Sir, are of opinion, that the plan you have proposed "would, if well digested and passed into a law, be carried into effect as easily as a turnpike bill." That such a plan might pass the legislature without difficulty, and be carried into effect with little interruption, I have no sort of doubt. It is not in the execution but the consequences of the measure that the danger consists. As a mere improvement on the old mode of conducting public elections, its utility is obvious and admitted.

As far as regards the constituent members of the assembly, it is probable the House of Commons would remain nearly the same as before. At all events, we could not expect, for the reasons before given, to see any change for the better. Nearly the same proportion of wealth, rank, and station, would find their way into the senate, under any form of popular suffrage; for

the qualities which naturally influence the public mind operate in all cases with uniform effect. The quantity of understanding and talent would, perhaps, be somewhat diminished. The essential difference is, that the members would come into the house, under the new system, not perhaps quite unbiassed as to their opinions, but perfectly unrestrained as to their conduct. The course they are henceforward to pursue is to be determined by subsequent events. When congregated into a mass, they are still in the same predicament. Their independence is now so well guarded, that the other two estates can find no point of contact by which they can be affected. The court can bribe them with no favours, and the Lords can threaten them with no punishment; for on the one side they can expect few honours and no emoluments, and on the other, as no Peer was at all concerned in placing any member in the house, he can of course effect nothing in depriving him of his seat. But we are not to suppose that no new influence will arise because the old is extinguished. It is not in the nature of things, that a body of six hundred men will often be governed by pure reason. Lord Chesterfield has observed, that every numerous assembly is *mob*, and that in a house thus constituted, not more than thirty or forty individuals can be expected to decide on any case from its intrinsic

merits. Admitting that there may be some sarcasm as well as truth in this opinion, though it is given with all the didactic gravity of a man who writes to instruct, we may be satisfied that the remark is founded, deeply and surely, in human nature. Wisdom is, of all qualities, the least gregarious. The precious gift of understanding is itself not very generally diffused, but many men, sufficiently wise in their individual capacity, never fail to surrender their reason to the sympathies and the passions which spread like leaven in a popular council. A few daring, ambitious and eloquent leaders, attach to themselves parties. The strongest of these soon gains the whole ascendency. This party, by the powers which have become prescriptive in the House of Commons, finds itself in possession of the whole force of government, and feels that the other two estates are wholly at its mercy. Can any one be mistaken in foretelling the result? The two upper estates existing merely upon sufferance, will any one believe that they would long exist at all? Is it the nature of ambition, and no ambition equals that of the leaders of a popular assembly, to admit a voluntary participation of its power? Violent encroachments would first be made on the acknowledged rights of the King and Peers. These usurpations, as they could no longer be indirectly prevented, would be

openly resisted. So new and so bold an assertion of right, unattended by any effective strength, would never be endured. The other two estates would first be considered as intruders, and then voted useless and detrimental to the state.

During this struggle, the ministers of the crown, if they were still admitted to have a place in the assembly, would find themselves utterly impotent. Almost all the effective strength of the house would be generally found ranged on the side of the opposition, for the remark of a great General of antiquity, "that the hope and the courage of assailants are always greater than of those who act on the defensive," is not less true in politics than in war. It would be found impossible to move the wheels of government, even in their accustomed track. If the common remedy for this grievance was tried, and a new ministry was formed from the popular leaders, they would soon find themselves in the same predicament. No steady system of measures could possibly be pursued. When the government has more than ever need of an accelerated motion, it would find itself clogged with all the weights of an unweildy democracy. The exposed councils, the secret intrigues, the slow resolves, and the tardy execution of that form of government would be our only help, at a period of time when the wisdom of an aristocracy, and

the promptness of a monarchy, were more than ever wanted. The anarchy of the legislative body could hardly fail of communicating itself through the nation. Our best institutions must be unsettled, and the steady march of our regulated liberty must be disturbed in all its paths: for in a nation so populous, wealthy and powerful as this, the government must be strong as well as free, or its freedom and its strength will perish together. It is impossible to say how long we could exist under such a state of things. Our national independence might possibly outlive our political liberty, for it it is a common remark, "that a nation is often most formidable externally, when its councils at home are the most distracted." Perhaps some popular commander, stimulated by private ambition, and feeling or feigning a regard for public tranquillity, would at length interpose, and seizing the helm of affairs, under pretence of composing them, would reduce the whole country under a military despotism. At least this is the possible, and perhaps the natural termination of such a state of affairs.

That this, or something like this, would be the probable course of events, no one who has attentively weighed the nature and examined the history of popular assemblies, can entertain much doubt. They are the natural consequences of creating in a

country like this, a numerous popular legislature, uninfluenced in conduct and uncontrolled in power. They are the ordinary evils of every democracy, whether nominal or virtual. They are that class of evils, to avoid which all the nice balances and countervailing forces of our intricate constitution have been so carefully adapted. These regulating powers are the centrifugal and gravitating impulses which keep the political planet in its due orbit, and without which it would be left to extravagate in the regions of unknown space.

It may be urged, that this is an unwise and exaggerated apprehension of mischiefs little likely to happen in the nineteenth century, and in such a country as Great Britain. In this nation, it will be said, the public mind is in its character too sober, and in political matters too enlightened, to permit the government to run into any such dangerous excesses. The check of public opinion will always operate to suppress any tendency to extremes in which the legislature may be disposed to indulge.

In reply to this objection I can only allege, that in estimating the possibilities of an unknown danger we are compelled to imagine extreme cases. Of the fearful catalogue of evils which have been just enumerated, it is not probable that the whole will come upon us at once, nor perhaps at all. But in

a subject of such transcendent moment, where experience is defective, and where consequently the *data* are few and unfixed, we are bound to provide for the worst contingency which is not in itself improbable. The records of nations afford no parallel instances of a case such as ours, and but few which bear even a distant resemblance. The senates of the Greek and Roman republics, as far as their proceedings can afford us any light, would tend but too much to confirm our apprehensions; but in those communities the people governed in a collective and not in a representative body. The republics of modern Europe, that of Holland alone excepted, are entirely out of the question, for they were not only small but they bestowed on different classes unequal privileges. The government of the seven United Provinces, in the time of the Stadtholders, exhibits, it must be confessed, something of a case in point. The senates of that republic certainly carried on the business of the nation with sufficient steadiness, and with very little interference of the executive government, either in the way of influence or corruption. But there was in the different provinces, a sort of *imperium in imperio*, which divided the power of the national senate, and there was also a powerful and effective aristocracy, which imparted to the state much of the strength and stability of a monarchy.

I cannot admit that the instance of America affords us any analogy on which to reason. That country is yet sustaining the *experimentum crucis*, and the *crisis* is not yet passed. A century hence, perhaps, she will offer us the result of the only experiment which has ever been tried on a large scale, concerning the effects and advantages of a government strictly representative. In the mean time, her example is affording us very important instruction on many of the first principles of a free constitution. Some of the most material benefits of that form of government, and of course those which are the most liable to abuse, are there subjected to hazardous trials in the attempt to attain a *maximum* of political liberty. The freedom of the press, the spirit of equality, and the vigilant jealousy of government, which are at once the symptoms and the securities of a free people, are there carried to the farthest point which is compatible with public safety. The result of all this is not adapted to inspire us with any great ardour in the race of experiment. As in the application of mechanical force we find, that whatever is gained in power is lost in duration, so it will commonly be found in political societies, that what is gained in freedom is lost in strength. A degree of licentiousness, which would endanger the safety of an European state, is found in America to be very consistent

with public tranquillity. Her remote position; her security from hostile attack; her superabundant produce, and her consequent exemption from many of the vices and miseries of an old nation, admit a degree of feebleness in the government, which in the perilous politics of modern Europe, would inevitably prove fatal. Our most important public measures in this country are adapted as much in reference to external strength, as to internal freedom and national happiness.

The only example in history, which bears any close analogy to the case we have been supposing, is the instance of the rump parliament. That assembly, after a series of contests, at length acquired or assumed a degree of independence, with which the safety of the monarchy could no longer consist. The struggle would have come much sooner to a crisis, if the King had been at that time, as he is at present, entirely dependent on the Commons for his supplies. As it was, the disproportionate strength of the two parties soon became apparent. In a contest between the crown and the representative body, the contending powers fight with such unequal arms, that the monarch has no chance of success, unless he can contrive to carry the war into the enemy's territory. King Charles, unfortunately for him, had no such resource. The system of influence was then but little known, and

he did not possess in any considerable degree, the means of corruption. The Parliament having finally acquired the whole power of the state, every thing then took its regular course. All the talent, and the enterprize, and the ambition, which had been before suppressed, now rose to the surface, and soon found its natural level. He alone possessed pre-eminence who had the spirit to win it, and the ability to maintain it. Nothing was talked of but liberty and religion, and nothing was practised but tyranny and impiety. The whole, at length, terminated in a despotism which, but for a concurrence of fortunate occasions, might have endured for ages.

I purposely forbear to mention the recent example of France, when placed in a crisis such as I have been supposing. The minds of men are even yet too much heated with that agitating subject, to make any useful application of its lessons in the direction of national conduct. A century hence, perhaps, when all its documents may be evolved, and all the passions which it has excited shall be stilled in the tomb, the political philosopher may deduce or confirm some important principles from that stupendous portion of history.

It appears, then, to me, that as far as we can derive any light from reason or experience, these great guides of human conduct here concur in the

same result. They teach us that a national assembly, which represents the whole population, and commands the entire property of a country, will assuredly acquire any degree of power which it chuses to possess. That such a body requires some other controul than its own intrinsic wisdom and moderation; and finally, that an independent House of Commons, in its present plenitude of power, is not compatible with the integrity of the British constitution.

That this account of the actual state of the British government is correct; that the third estate of the realm has thus outstripped its colleagues in the race of power, will, I conceive, be generally admitted. The Commons not only enjoy the power of the purse, but defend it from the smallest encroachment with the most vigilant jealousy; and this alone, in a nation where wealth is the principal source of power, includes the command of almost every thing else. By a sort of usage, which is growing fast into prescription, almost all the important business of the nation is committed to the lower house; of which the acts pass the two other estates almost as smoothly as the edicts of Louis XIV. were registered by the parliament of Paris. The minister of the crown cannot even attempt to carry on the business of the nation without an assured majority in the Com-

mons. Above all, they constitute that branch of the legislature on which the public eye is fixed, and by which the public mind is directed.

Here it will naturally be urged, if this is really the case, let us take the whole constitution in hand and "reform it altogether." Let us bring back the three estates to their pristine purity by a really radical reform. Restore to the King and the Lords the whole of their weight in the legislature, in its original and unimpaired vigour. We can then reform the House of Commons, both in its formation and its functions, without destroying that equilibrium which is so anxiously defended and extolled. That such a change, if it could be effected *peaceably* and *completely*, might not be highly desirable, I am very far from affirming; but I believe the attempt would at present be utterly hopeless. That it could not be accomplished but by slow degrees and reiterated efforts, I am perfectly convinced. Neither the nation nor the House of Commons would consent to such a dereliction of power, as this scheme supposes. Those who could comprehend the full extent of so vast a plan would alone be active in its support, and of such the number is necessarily few. The people at large, who regard the lower house as the principal if not the sole depository of their rights, would consider a reduction of its power as the wreck of national

liberty. The mind of the country is essentially democratical, and would not see without great jealousy, any considerable resumption of power by the monarchy and the aristocracy. At all events, the subject exacts a previous investigation, which will not be very soon nor very easily undertaken.

Such are the reasons which, with great deference, I have thought it advisable to lay before you, as the grounds of my opinion, that your plan of reform would not, in either of its two great features, "preserve the rights of the crown, nor restore the balance of the constitution." On the contrary, I have endeavoured to shew that it could not fail to destroy that balance entirely, according to the spirit of the constitution as it exists in the *lex scripta* of its theoretical perfection.

After the short but very perspicuous exposure of this plan with which your letter commences, you proceed to say, "that this mode of reform is not only more effectual than any other, but also in your opinion more practicable." Being in its very nature essentially comprehensive of all other modes, you imagine it can hardly fail to unite the suffrages of all the advocates of that great cause, however various or inconsistent in their views. I cannot but think this position exceedingly doubtful. I cannot be convinced that this mode of reform would ever receive any very considerable

support among those classes of society, which, for all the purposes of public opinion, constitute the effective population of the realm. It would not, I think, unite even any two of the political parties into which the nation is now divided. In the first place, it could not be expected to receive any countenance from that numerous and powerful body which is sometimes designated "the *tories*," and which comprehends all the partizans of the late Mr Pitt, as well as of all the subsequent administrations which have professed to act in his system of policy. This party alone, I suspect, includes in itself a majority of all the housekeepers in Great Britain who pay annual taxes. Of this formidable body you must reckon not merely on the negative concurrence, but on the active and persevering hostility. With a considerable portion of that number, the very mention of reform is, as you express it, the signal of alarm, and this alarm, whether founded on interests private or patriotic, would be exasperated into terror, by a scheme of reform so summary and unsparing. In the next place, it would not, I think, receive any very extensive encouragement from that party who call themselves "the *whigs*." This term, I imagine, comprehends all those avowed friends of the constitution who, from principle or from prejudice, attach themselves particularly to the demo-

cratical part of the government; either from a natural dislike of arbitrary power, or from an opinion that our liberties are habitually in greater danger from the *prerogative* than the *people*. But those men have never scrupled to vary their conduct in order to preserve the consistency of their principles. The old apophthegm, "*tempora mutantur et nos mutamur in illis*" is their maxim, as the bias of the constitution may happen to shift from one side to the other. The whigs have taken the third estate under their especial protection, and have anxiously stood centinel at that important post, but they have been still more anxious to preserve the *integrity* of the constitution. As the soldier who is set to guard an important station, though he watches with sedulous care the object committed to his peculiar trust, yet feels a paramount regard for the safety of the whole army of which he forms but a part. The whigs have always taken the alarm when the balance seemed to incline too much to the popular side, and have even thrown their weight into the opposite scale. This numerous body, powerful and respectable from their rank, their wealth, their talents and their patriotism, would never be brought to favour any scheme which embraced universal suffrage, under any modification.

There remains then only one party in the coun-

try which could be expected to support this mode of reform, with any great degree of zeal or unanimity. This party, though commonly named from the leader of the day, is found in every country, and is co-existent with every form of government. Of late years, its members have been called in this country the "Burdettites," from the name of that distinguished person who has been placed at their head by general consent. They are spread through every class of society, but are chiefly to be found, perhaps, in that order which is immediately above the lowest. They are unquestionably entitled to the most respectful consideration from their numbers, their habits, and the pre-eminent share they take in the labour of the community. It is the fashion with many persons, to stigmatize this body as universally disaffected to government, and as impatient of all the restraints of civilized society. Such, however, is the usual distortion of party misrepresentation. With considerate men, though some exceptions may be admitted, the general purity of their motives, and the unaffected ardour of their patriotism, are undoubted. But, though formidable by their strength and considerable by their numbers, the nature of man and the eternal course of human affairs must change, before they can ever rise to the direction of public opinion. The present structure of civilized society must be

demolished, before they can ascend with safety to the government of nations. Such are the irrevocable laws which bind communities together. "To do every thing for the people, but nothing by them," is one of the hard necessities of human nature, but it is one of the most essential rules of political conduct.

Hence it is that the immediate mode by which the proposed alterations are to be carried into effect, is itself their most objectionable feature. The means are not less perilous, than the instruments are inadequate. If the party last mentioned, should really be able to carry any important point, it can only be by a consent of opinion, so universal and so strongly manifested, as to become irresistible. And who can think without alarm of so powerful a stimulus acting on the most essential part of the physical strength of the nation? The axiom in mechanics, that "heavy bodies are not easily disturbed, but if once put into action, move with a velocity proportioned to their weight," is equally true and far more important as it respects the body politic. It applies not less to the moral than to the physical motion of that ponderous mass. The popular mind, once impelled into violent action, moves in the accelerated ratio of a descending body, and can no more be directed, restrained or regulated, than a popular insurrection. To give

to that untractable engine the exact *momentum* which is requisite to effect a given purpose, is of all human undertakings the most difficult. Sometimes it may fail to reach, but most commonly it will overshoot the mark. Having once discovered the secret of its own strength, it may cease to obey the governing hand, and will seldom stop at the object prescribed. Those who employ it, perhaps for purposes the most laudable, will sometimes be amazed to see it suddenly turn out of the right track, and commit the most alarming devastations in its devious and unrelenting march. The force of popular will, like the elemental powers of fire and water, is of excellent use when kept under due controul, but like them, it is of tremendous potency when it once becomes our master.

Such, Sir, are the reasons and the statements which have satisfied my mind, that "a radical reform of the House of Commons," as it is sometimes called, is not desirable if it were practicable; that if it were desirable it is not attainable, or can only become so by the intervention of an agency, which it is always perilous to employ, and generally impossible to regulate. But in saying this, it is very far from my intention to assert, that we ought to sit down contented with the government as it now is, and make no farther efforts towards improvement. Undoubtedly there are some de-

ficiencies to be supplied and many excrescences to be removed. Government, like every thing human, is never stationary. It is always advancing towards the point of perfection, or declining from it; and we may be quite sure, that if we do not improve we shall soon deteriorate. The great dispute is not concerning the necessity, but concerning the "mode and measure" of improvement. It is the misfortune of all party contests, that nothing is admitted or supposed but extreme cases, although the actual state of things is commonly mixed and intermediate. On this principle, it is the fashion with one party to decry all external influence over the House of Commons, as unconstitutional in theory and pernicious in practice; while another asserts with no less confidence, that the influence of the crown "has not too much increased," and that it "ought not to be diminished." In this violence of opposition, little care is taken to inquire into the real state of the case. No one attempts to ascertain, which, however, is the one thing needful, whether the course of events has altered the relative powers of the three estates, and in consequence destroyed the equipoise of the constitution. No one attempts to ascertain what is the exact degree of influence which is requisite to balance the increased power of the House of Commons, by the increased power of the crown.

The great object undoubtedly is, to render the Commons as independent as is compatible with the prerogative of the Monarch, and the privileges of the aristocracy. How then is this critical inquiry to be conducted? Undoubtedly we must follow the usual process in subjects of this complicated and delicate nature. We must carefully observe the symptoms of the actual government, and see whether they indicate a sound and healthy state of the constitution. In this analysis we shall, I suspect, discover some causes for dissatisfaction. The promptness and vigour of the monarchy, perhaps, require a degree of power in the lower house, sufficient to conduct the ordinary business of government without much interruption, and perhaps to influence their decision in certain questions of dubious import. But this is all that can be allowed. It ought not to enable the servants of the crown to carry an important question against the plain dictates of justice, the unbiassed opinion of the house, and the clear sense of the nation. This, I admit, is in some cases a line very difficult to be discovered, but in others, it is palpable and unequivocal. There is not, perhaps, in the history of England, a stronger or a clearer case of ministerial delinquency, than the celebrated Walcheren expedition. Certainly there has been no event, since the accession of the House of Brunswick, so

strongly calculated to rouse the spirit and independence of parliament. I state this as a mere historical fact, which I suppose will not admit of any dispute among men who have any pretensions to impartiality. On a dispassionate survey of the history of the whole transaction, it seems quite impossible that there could be two opinions on the subject; and yet the authors of that disastrous project, undertaken not only without, but against the consent of their own confidential advisers, were not merely not condemned for their conduct, but expressly applauded by a majority of the House of Commons. In the cases of Lord Melville and the Duke of York, though the culpability of the accused persons was by no means equally evident, the sense of the house seemed to be still more unanimous. Yet one of these high official servants of the crown was impeached by the casting vote of the Speaker alone, and the other was acquitted by a considerable majority. These instances, and many others which it might appear invidious to accumulate, seem to indicate the existence of a degree of influence, which, if it should continue to increase, would threaten, at no distant period, to annihilate the chief uses of the lower house as a deliberative body. To this point, therefore, the first efforts of reform should unquestionably be directed.

To this evil, which I admit is most serious in its nature, and liable to become in a short time alarming by its magnitude, I do not know that any better remedy can be applied than that proposed by Mr Brougham. To diminish the number of placemen in the House of Commons, is the most obvious means of reducing the influence of the executive power, and perhaps the most practicable. It has been admitted, for some years past, by the more candid and moderate of all parties, that the number of placemen in the lower house is become evidently too great, and I think a motion to that effect would in time acquire a powerful support. The diminution, however, ought to be gradual, and at sufficient intervals of time, to exhibit the effect of each progressive reduction on the constitutional *balance of power*. I would carry this principle of reform to the utmost limits which are consistent with that balance, but I should be greatly afraid of passing the confines to any great distance. The task of letting down the monarchy to the exact constitutional point, is at all times a critical and hazardous process, and at this exigent crisis, an error on that side might become of all others the most certainly ruinous.

The subsequent propositions of Mr Brougham are also unobjectionable, though their objects are

less pressing and perhaps less attainable. Timid statesmen have not so much dread of parliamentary as of popular innovations. It cannot, however, be denied, that some alterations in our system of election are exceedingly desirable. Without expecting, from such changes, much improvement in the constituting or constituted masses of the House of Commons, I yet think that they ought to be attempted, if it were only for this reason, that they have been so long and so loudly demanded. The voice of the people ought never to be disregarded except when it is in the most direct opposition to their interests. The gross defects in our representative system will always supply a plausible ground of complaint to the discontented, and a fertile theme of argument and invective to the ingenious, while even to the most considerate it exhibits a spectacle which cannot be viewed without some disgust and aversion. It is, on the other hand, highly expedient to take the delicate task of reform out of the hands of desperate and thoughtless speculators, who, by some unforeseen chance of events, may hereafter acquire the power of setting about the work in their own way. On these considerations, the projects of Mr Brougham ought to be attempted with as much expedition as is consistent with the purposes for which they are undertaken. On one principal point only I presume to differ with that gentleman, I think the separate parts of his plan ought not to

be essayed simultaneously but *seriatim*. Chronic diseases require chronic remedies, and every improvement in government ought to be tried with the reserved condition, that if it ſhould be found to fail in the experiment, we may be able to tread back our steps with speed and safety.* Too much, therefore, ought never to be attempted at once. The people cannot always be made to comprehend the grounds on which a great public measure is undertaken or relinquished, and to abandon or abolish a scheme of reform will always be an invidious task. In proportion to the magnitude and plausibility of the attempt the difficulty will be augmented.

Nor ought we too haſtily to adopt the notion, that a proposal for reform, because it is partial, and as some will think inefficient, will always be ill received in parliament. It was the opinion of the late Mr Burke, as well as of other experienced members, that any measure of self-evident justice and advantage, might in time be carried through parliament by steady and unrelenting perseverance. Favourable occasions will assuredly arise, when they are patiently waited for and diligently watched. The final triumph of the great question of the Slave Trade, over its innumerable obstacles, is an instance of the truth of this opinion.

* Freedom, says Rousseau, may be acquired, but it cannot be recovered.

You will perceive, Sir, from what has been said, that it is not the purport of this Letter to assert or insinuate an opinion, that great improvements in our government are not yet wanting, or that something ought not instantly and indeed continually to be attempted: far less to dismiss the whole question of reform altogether, as unimportant and unseasonable. My principal object is to shew that in the path to political perfection, we have already reached such an advanced post, that it is far more incumbent on us to be intent on securing the ground we have gained, than on making fresh acquisitions. That nothing is so likely to drive us back as a too great eagerness in pushing forward; and that as we are travelling in an unknown road, it behoves us above all things to explore the ground before us, and to advance at every step with slow circumspection. This appears to me a point of such supreme importance, that it can scarcely be insisted on with too much earnestness or perseverance.

A certain political writer has lamented that the world is yet too young to have acquired a proper degree of experience in the art of government, and that a period of 3000 years is by no means long enough to afford a sufficient number of experiments for so complicated a science. Without affecting to join in this curious complaint, we may be permitted

to observe, that we greatly desiderate that kind of experience which to us is chiefly valuable. We want experience of the effects which might be produced by different modifications of a free or representative government. Of all the varieties of tyranny and despotism, genera and species, we have abundant specimens, but history scarcely affords a single example which can be of any use to those who meditate improvements in a free government. This, however, we may assume as a certainty, that no scheme which has yet been tried in any great nation, ancient or modern, has been found to answer so perfectly the proper purposes of a government as the British constitution. None has ever provided such effectual securities for the liberty of the subject, and at the same time, maintained an equal degree of internal quiet and external strength. None has perhaps been found capable of diffusing through all the gradations of society so great a portion of individual happiness, virtue, and intelligence. An acute and learned philosopher,* who had surveyed the history of mankind with a penetrating eye, has declared it as his opinion, that no great people in any age of the world, ever rose to so high a degree of national freedom and happiness, as was enjoyed by this

* Hume.

country during the sixty years which followed the revolution of 1688. I think it cannot be denied that in the sixty years which have since elapsed, we have made still further advances in this noble career. During the former of these periods we were afflicted by no less than two intestine rebellions, excited by that most worthless of all the causes of civil war, a disputed succession. Public and private corruption then appeared in a much more unqualified mode, and in a far more illiberal guise than of late years. I will not say of this or of any other vice, "that it loses half its evil by losing all its grossness," but I may safely affirm that no evil is so desperate and incurable as that which is open and avowed, and that where there is no shame, there can be no hope of virtue. The permission acquired during the last sixty years of publishing the debates of parliament, I reckon a most substantial accession on the side of liberty. In addition to these indications of public improvement, there is reason to believe that the comforts and condition of the poorer classes have materially improved within the same period; and this, after all, is the only sure test either of a good government or of national prosperity.*

* Of course I take no account in this statement of the misfortunes produced by the mistaken policy of late years. These I conceive to have no connection with the *quantum valuit* of the established government.

Such is the elevated rank in the scale of nations, to which, by a slow and painful progression, we have actually arrived. Every citizen of the state ought to be anxious to understand, in order that he may be competent to maintain and improve, the government which has reached so elevated a distinction. The peculiar excellence of the British constitution is understood by the best writers, English and foreign, to consist in such a distribution of power among the three estates of the realm, as preserves among them a due equilibrium, and secures each from the encroachment of the others. The three forms of government which have chiefly prevailed among mankind, monarchy, aristocracy, and democracy, have each of them certain advantages which deserve to be retained, and some defects which ought, if possible, to be avoided. By mixing them together in a sort of balanced union, we have secured the benefits of each, and excluded their faults in a greater degree than was even thought possible by some ancient and modern writers of no mean authority.

Yet this "beautiful system,"* which Cicero only imagined; which Tacitus admired in its embryo, and Montesquieu extolled in its maturity, as the perfection of human contrivance in the art

* Montesquieu.

of governing nations: this beautiful system, according to the last of those great men, had its origin in the woods of Germany. It was not produced by the wisdom and learning of colleges or councils, or by any single effort of individual or collective ability. It grew up with the growing intelligence of successive ages, and the happy circumstances and spirit of this favoured nation. We have passed through the "*loca senta situ, noctemque profundam*" of ignorance, superstition, and tyranny, to an eminence, very remote indeed from that degree of perfection in government which is conceivable, and perhaps attainable; but yet, by the concurrent voice of the ablest men, we have reached the farthest point which has ever been approached in that most important of all arts.

That we have actually attained this enviable superiority is generally agreed; and it is also agreed that we have attained it by a happy intermixture and a skilful counterpoise of the three forms of government which have commonly prevailed among nations. The exact degree in which the powers of these three are employed, and the precise mode in which their equipoise should be maintained, is not equally clear. These points are left to be settled by experience and observation. The nature and value of the British constitution are not to be de-

termined by its name and its form; still less by the beauty of its proportions or the harmony of its construction. We must see the effects it produces, when set in motion, to ascertain either its proper value, or that of the changes which it has undergone. The progress of events has thrown a vast preponderance of power into the hands of the Commons. To oppose this openly and directly would have been certainly dangerous, and perhaps ineffectual; but some new weights have been discovered and thrown into the balance, which have in some degree restored its equilibrium. Would it be wise to destroy this equilibrium, which has been attained by the natural struggles of the two upper estates to preserve themselves from utter impotence? Ought we not to be very cautious, lest by some precipitate or extensive reform we should happen (as De Lolme observes) to destroy the *talisman* by which this complex structure is held together? May we not remove the secret power, in which, like the lock of Sampson, the virtue of our constitution is supposed to reside? As the excellence of our government is a point admitted, and the means by which that excellence is produced and preserved, is a point disputed, should we not be aware of the immense stake we are playing for, and that our chance of gain bears no proportion to our risque of loss? A skilful chymist,

while weighing the proportions in which some drugs of powerful effect are to be compounded, will try to attain the exact balance by small and successive additions and subtractions. He cannot possibly accomplish his purpose by any other process.

That political science is, beyond almost any other, a science of experiment, is established by the clearest evidence. The ablest politicians, in foretelling the event of a dubious measure, or in prophesying concerning the result of an untried scheme, have been guilty of such gross errors, that it seemed a matter of mere chance when they happened to be right. All the subjects which regard the complicated interests of civil society, such as political economy, commerce, money, or national wealth, are those concerning which the most numerous theories have been contrived and defended. At this very moment, in the 19th century, there is scarcely a single point in abstract politics which has gained universal and undisputed assent. Nor ought this at all to surprize us, when we consider that human abilities are here the instruments, and human society the object of our operations. We can only infer, that in a subject of such extreme difficulty, and at the same time of such unexampled importance, we ought to reason with the most

cautious precision, and establish our conclusions with the greatest diffidence and hesitation.

But though it becomes us to adopt this tone of indecision in speaking of the future and the possible, we may at least be allowed to speak with certainty of the past. We may, therefore, affirm with confidence, that nothing can be more vain and illusory than to talk of "bringing back the constitution to its ancient purity;" a phrase very common with many of the writers on this subject. As the term "ancient" is relative, and, of course, somewhat vague in its meaning and application, I should be glad to know the precise period when this supposed purity, if indeed purity admits of graduation, was in its state of highest perfection. It can scarcely be fixed in the times of the Plantaganets, when that scheme of organized slavery, which is commonly called the feudal system, prevailed in England. Under that dynasty, the great were every thing and the people nothing. A proud and fierce aristocracy, dispersed through the realm, brought home tyranny to every door, and liberty and property, and even life itself, were at the mercy of the petty tyrant of the vicinage. Next came the line of Tudor, the first prince of which transmitted to his descendents all the authority which is commonly assumed by the victor in a civil war, especially if that victor unites in himself

the claims of contending titles. Under these sanctions, they carried the prerogative to a height which transcended and sometimes superseded the established law of the land. The people indeed acquired an increase of importance, but liberty was not less insecure; and even the brightest gem in British jurisprudence, the Habeas Corpus act, often opposed but a feeble barrier to the will of the monarch. The Stuarts inherited the same tyrannical principles, but were obliged to practise them with more reserve, for knowledge and science were then fast emerging from their long eclipse. Yet the *jus divinum regum* was always in their words as well as their thoughts; *quæ verba*, as Cicero beautifully expresses it, *jam pridem in hac repub. non solum tenebris vetustatis, verum etiam luce libertatis oppressa sunt.* I cannot be persuaded, for the reasons already given, that the government has undergone any depravation since the period of the revolution. If Mr Pitt swayed the lower house more despotically than Sir Robt. Walpole, which is very doubtful, it was not by the influence of greater corruption but of superior talent.

We must look then to modern times, if we wish to discover the bright era of the British constitution. The struggles of our ancestors were such as to entitle them to our everlasting gratitude; and with their lights and their means they

did all that could possibly be expected, but after all they were only the PIONEERS of liberty. They removed the impediments which obstructed its slow and arduous progress, but it was reserved for future ages to reap the full benefits of their inestimable labours.

It is now become our first duty, as well as our paramount interest, to transmit this inheritance to our posterity; improved as far as improvement is attainable, but at all events unimpaired. Our task is at present comparatively easy. Those who have gone before us have shewn us the way, and we cannot now lose it without a blind rejection of all the lessons which history affords to nations. The foundations of a government, combining the two great requisites of firmness and freedom, are deeply laid in that soil which alone affords a *substratum* for so solid and magnificent a structure—in the intelligence, spirit and habits of the people. The government must always advance in improvement as the people from whom it emanates, and to whom it reverts, rise in the scale of knowledge and virtue, and without that progression, an increase of freedom is not desirable if it were in our power. It is the spirit and knowledge of freedom universally diffused; it is the sense to discern the abuses of power and the disposition to resist them, which are, after all, the real securities of national liberty. Such is the nature of every government, that it is

sure to make encroachments when it can make them with impunity. The chief evils, which we have to fear, must arise from the interruption or suppression of that great engine of national improvement, the *freedom of the press.* An eminent philosopher has observed, that the decay of liberty in nations is commonly first announced by that morbid and dangerous symptom. It must be confessed, that "the signs of the times" have lately been such as to alarm the most sober politician on this essential point, but a spirit of resistance has been shewn, by which, I am willing to hope, our fears are at present effectually removed.

Such, Sir, are the grounds on which I have presumed to differ in opinion with a man, whose erroneous doctrines, if they are such, become dangerous in proportion as his general character is estimable and attractive. I have been induced to publish this letter, by a sentiment of sincere regret that you should have preferred the plan of reform recommended in your Letter, to the propositions of Mr Brougham, and should have given to that preference the public sanction of your name and reputation. In my opinion, your view of this question is at variance with the general tenor of your political opinions, and, as far as I have seen, with the ordinary course of your public conduct. I cannot recognise in it that spirit of moderation

and sobriety, which you have always, and I believe with the utmost sincerity, professed and applauded. In this, however, I may be mistaken; but the objections I have urged seem to me of some weight, and though sufficiently obvious, they are such as have not been either supposed or refuted, by any advocate of reform whose speeches or writings have come under my inspection.

I have the honour to be,

SIR,

With the greatest respect,

Your most obedient servant,

J. M.

FINIS.

ERRATA.

Last line of the motto, for "ἰθιγδείς" read ἰθισδείς.
Page 7, line 18, for "innovator" read *enemy to innovation.*
27, — 14, for "of power" read *for* power.
48, — 11, for "on" read *in.*
54, — 13, for "in" read *over.*

Printed by Wright and Cruickshank.

REPORT

OF THE

TRIAL

OF

EDWARD SHERIDAN, M. D.

UPON AN

INDICTMENT FOR A MISDEMEANOR,

AT THE BAR OF THE KING'S BENCH,

ON

Thursday and *Friday*, the 21st and 22d Days of *Nov.* 1811.

BY JOHN P. HATCHELL, Esq.
Barrister at Law.

Dublin:

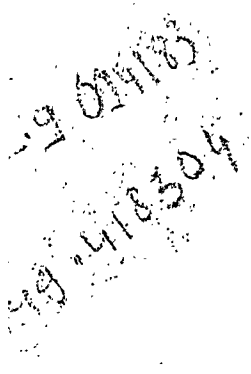
PRINTED BY GRAISBERRY AND CAMPBELL, BACK-LANE,

AND SOLD BY

GILBERT AND HODGES, DAME-STREET.

1811.

282.4183



A REPORT, &c.

COURT OF KING'S BENCH,

Thursday, 21st November, 1811,

JUDGES PRESENT,

The Right Hon. WILLIAM DOWNES, *Chief Justice.*
Justice DAY. Mr. *Justice* DALY. Mr. *Justice* OSBORNE.

Edward Sheridan, M. D. was put to the Bar.

He had been arraigned on the 11th day of November, upon the following indictment:—

County of the City of Dublin, to wit.—The Jurors of our Lord the King upon their oath, present, that on the 9th day of July, in the year of our Lord, 1811, at Fishamble-street, in the County of the City of Dublin, divers persons, to the said Jurors unknown, assembled themselves together, and being so assembled, and then and there contriving and intending to cause and procure the appointment of a Committee of persons *professing the Roman Catholic Religion*, to exercise an authority to represent to the *Inhabitants of Ireland*, professing the Roman Catholic Religion, *under pretence of causing Petitions to both Houses of Parliament* to be framed for the repeal of all laws remaining in force in Ireland, by means whereof any person *professing the Roman Catholic Religion is subject to any disability, by reason or in consequence of his religious tenets*; *and also under pretence of procuring* an alteration of the said matters so established by law, did then and there amongst other things, enter into certain resolutions of and concerning such Committee, and of

and concerning the said laws so remaining in force in Ireland, and of and concerning certain districts in the City of Dublin, called Parishes, and used as such for the purpose of public worship, according to the Rites of the Roman Catholic Religion, of the purport and effect here following, that is to say, that a Committee of persons professing the Roman Catholic Religion, (meaning such Committee as aforesaid,) should be appointed, and requested to cause proper Petitions to both Houses of Parliament, to be forthwith framed for the repeal of the Penal Laws, *(meaning the said Laws,)* so remaining in force in Ireland; and to procure signatures thereto in all parts of Ireland, and to take measures for bringing such petitions under the serious consideration of the legislature within the first month of the ensuing Sessions of Parliament; and that said committee should consist of the Catholic peers and their eldest sons; the Catholic baronets; the prelates of the Catholic Church in Ireland; and also ten persons to be appointed by the Catholics in each county in Ireland, the survivors of the delegates of 1793, to constitute an integral part of that number; and also of five persons to be appointed by the Catholic inhabitants of each parish in Dublin, meaning each district, so called a parish, as aforesaid. And that *Edward Sheridan*, late of Dominick-st. in the county of the city of Dublin, Doctor of Physic, *being a person professing* the Roman Catholic religion, and divers other persons professing the Roman Catholic religion, to the said jurors unknown, well knowing the premises; but being *ill-disposed persons*, and unlawfully contriving and intending to aid and assist in and towards the constituting and forming of such committee as aforesaid, on the 31st day of July, in the year 1811, at Liffey-street, in the county of the city of Dublin, in order to comply with such resolutions, and to aid and assist in and towards the constituting and forming such committee, did meet and assemble themselves together, for the purpose of appointing five persons to act as *representatives* of the inhabitants professing the Roman Catholic religion, of and in one of the districts in the city of Dublin, aforesaid, commonly called the parish of St. Mary, in the said committee so proposed to be formed; and that at and in the said meeting, so then and there held for the said purpose, one *Thomas Kirwan* then and there being a person professing the Roman Catholic religion, was then and there unlawfully appointed by the said persons so then and

there assembled, to act as one of the representatives of the said inhabitants of the said district, in the said committee so proposed to be formed; and that the said *Edward Sheridan*, then and there, with force and arms, knowingly, wilfully, and unlawfully was one of the persons so assembled, and then and there acted as chairman of the said meeting, and then and there as such chairman, proposed, as a question to the said meeting, whether the said *Thomas Kirwan* should be so appointed or not? and on the said question being so put, the said *Thomas Kirwan* was then and there so appointed by the said persons, as aforesaid; and so the said jurors say that the said *Edward Sheridan*, in manner aforesaid, then and there acted at and in the said appointment, to the great encouragement of *riot, tumult, and disorder, to the evil example of all others*, in the like case offending, against the peace of our said Lord the King, his crown and dignity; and against the form of the statute in that case made and provided.

And the said jurors of our said Lord the King further present and say, that *Edward Sheridan*, aforesaid, so being a person professing the Roman Catholic religion, on the 31st day of July, in the year of our Lord, 1811, at Liffey-street, in the county of the city of Dublin, met and assembled themselves together, for the purpose of appointing five persons to act as representatives of all the inhabitants professing the Roman Catholic Religion, of and in a certain district commonly called the parish of St. Mary, in a committee of persons professing the Roman Catholic religion, to be thereafter held, and to exercise a right and authority to represent the inhabitants of Ireland professing the Roman Catholic religion, under pretence of preparing petitions to both Houses of Parliament for the repeal of all laws remaining in force in Ireland, by means whereof any person professing the Roman Catholic religion is subject to any disability by reason of his religious tenets, and of thereby procuring an alteration of the said matters so established by law, and that at and in the said meeting so then and there held, one *Thomas Kirwan*, then and there being a person professing the Roman Catholic religion, was then and there unlawfully appointed by the said persons so then and there assembled to act as one of the representatives of the said inhabitants of the said district in the said committee to be so thereafter held as last aforesaid, and that the said *Edward Sheridan*, then, together with divers other ill dis-

posed persons professing the Roman Catholic religion, and then and there, with force and arms, knowingly, wilfully and unlawfully was one of the persons so then and there unlawfully assembled, and then and there acted as chairman of said meeting, and then and there, as such chairman, proposed as a question to the said meeting, "whether the said *Thomas Kirwan* should be so appointed or not," and on the said question being so put, the said *Thomas Kirwan* was then and there so appointed by the said persons as last aforesaid, and so the said jurors say that the said *Edward Sheridan*, in manner last aforesaid, then and there acted at and in the said appointment last mentioned, to the great encouragement of riot, tumult and disorder, to the evil example of all others in like case offending, against the peace of our said Lord the King, his crown and dignity, and against the form of the statute in that case made and provided.

The *Clerk of the Crown* required to know from Mr. *Attorney General*, whether it was his desire to have all the traversers against whom similar indictments had been found, put to their challenges.

Attorney General. No; we will proceed with the trial of Doctor *Edward Sheridan.*

The *Clerk of the Crown* then desired proclamation to be made for the petty jury.

The following gentlemen were then called over on the petty jury pannel.

Joseph Goff,
Luke White,
Benjamin Geale,
Arch. Hawkesley,
William S. Magee,
Peter D. Latouche,
John Roche,
John Lindsay,
M. James Plunket,
Arthur Guinness,
Bartholomew Maziere,
Leland Crosthwaite,
John Patrick,
James Farrel,
William Harkness,
Hugh Hamill,
John Orr,
Robert Orr,
George Thompson,
Thomas Harvey,
Thomas Meade,
Richard Williamson,
Henry Lyons,
Thomas Dawson,
Richard Wade,
George Maquay,
Daniel Kinahan,
Samuel Gordon,
Nathaniel Caldwell,
John Hutton,
William Humphrys,
James Chambers,
William Wood,
James M'Call,

Charles Fawcett,
James Jackson,
Robert Armstrong,
James Hamilton,
Richard Darling,
John Dawson,
William Hutton,
T. T. Frank,
James Begg,
Alexander Jaffray,
Patrick Marsh,
Nathaniel Trumbull,
Robert Turbot,
John Pepper,
Edward Croker,
Martin Geoghegan,
Richard Verschoyle,
William Sparrow,
Peter Roe,
John Verschoyle,
Philip Doyne,
James Clarke,
Edward Clibborn,
James Colson,
William Grimshaw,
James Holmes,
Charles M'Kiernan
Thomas Richardson,
Charles Mulvany,
Charles Pentland,
John Hamill,
Richard Corballis,
Nathaniel Lynch,
Jonathan Lynch,
Ralph Shaw,
Robert Swift,
George Knox,
Robert Reid,
Henry Higginbotham,
William Hunt,
John Stewart,
Edward Swanwick,
Henry Higginson,
Jeremiah Sullivan,
Christopher Ormsby,
Minchin Lucas,
Richard Speer,
Francis Brady,
John C. Cuming,
William Andrews,
Charles Archer,
John Barton.
Jacob Geoghegan,
Ebenezar Geale,
Robert Hall,
Samuel Scott,
Andrew Richey,
Thomas Walsh,
Thomas Unthank,
John Rutherford,
T. Sinnott,
Ralph Richardson,
William Peck,
Edward Stephenson,
Thomas Hodgens,
Robert Hodges,
William Hawthorn,
J. Carrick,
James Corballis,
Christopher Nihil,
James Kelly,
Henry Bingham,
James Hillas,
Robert Smith,
Thomas Dwyer,
George Moore,
Francis Mills,
Andrew Maziere,
Thomas Manning,
Jos. Litton,
Samuel Lawrence,
William Colville, jun.
George Young,
John Graham,
William Dykes.

Upon the pannel being called, it appeared that twenty-two jurors only attended.

The Sheriff stated, that the hall of the Four Courts was so crowded, it was almost impossible for the jurors to get into court.

Mr. *Attorney General* moved the court, for the jurors to be called upon fines. Upon which beingdone, *sixty-eight* appeared.

Benj. Geale Being called as foreman of the petty jury:—

Mr. *Burrowes* said he was desired to ask the juror, whether he had formed any opinion, or declared any opinion on the subject of the present trial.

Mr. *Goold.* It has been ruled, that the question has a right to be answered by a gentleman so objected to.

Mr. *Attorney General.* The law on this subject is perfectly well settled and known. No juror can be asked such a question; because it is against law that he should have either formed an opinion, or declared one.

Mr. *Burrowes.* Sixty-eight persons have appeared on the pannel; it is only wished that this Gentleman shall stand by for the present.

Court. It has been ruled, and is established, that no such question can be asked. You may prove it.

Mr. *M'Nally.* The question was frequently asked, and the juror sworn, in the cases for High Treason in Ireland.

Mr. *Goold.* It was a general principle laid down in the case of *Hardy*, tried for High Treason in England.

Court. You have known it ruled the reverse. If the juror has declared any opinion hostile to the Traverser, you must prove it. He is not bound to answer the question.

The counsel for the Traverser declined pressing the point.

Benjamin Geale—sworn.
Peter Digges Latouche—sworn.
John Roche—objected to by the crown.
J. Lindsay—objected to by the crown.
B. Maziere—objected to by the crown.
Leland Crosthwaite—sworn.
John Orr—sworn.
Richard Darling—objected to by the crown.
John Duncan—sworn.
William Hutton—objected to by the crown.
Thomas Thorp Frank—objected to by the crown.
Francis Biggs—objected to by the crown.
Alexander Jaffray—objected to by the crown.
John Pepper—sworn.
Patrick Marsh—objected to by the crown.
Martin Geoghegan—objected to by the crown.

William Sparrow was next called.

Mr. *Burrowes.* We are informed this gentleman is a sworn *Orangeman,* a character well known in the history of this country: and from the nature of the oath taken by such characters, he must of necessity be inimical to the Traverser, and the religion he professes.

Mr. *Goold.* We will take a challenge to this gentleman, *ore tenus* for malice against the Traverser, in as much, as the oath of an Orangeman is not only decidedly hostile to him as a Catholic, but also hostile to every Catholic in Ireland.

Court. Do you take a challenge or not? If you make a legal challenge we will decide upon it.

Mr. *Goold.* We take a challenge *ore tenus* which the Clerk of the Crown will take down—and to which Mr. *Attorney General* will either plead or demur. I therefore tender this challenge—" and the said Edward Sheridan, " in his proper person comes, and says that the said " *William Sparrow* stands not indifferent, as he stands " unsworn, but has malice to the said *Edward Sheridan,* "and this he is ready to verify." To try this issue, triers must be appointed.

Chief Justice. If a challenge is taken before any jurors are sworn, then officers of the court are appointed by the court: but if it be taken after jurors are sworn, then two of those jurors are to be the triers of the issue.

Mr. *Geale* and Mr. *Latouche* were then sworn to try the issue.

Mr. *Goold.* We will now produce Mr. Sparrow himself to prove he is an Orangeman, and that the oath which he has taken is hostile to the Catholics of Ireland.

The Clerk of the Crown swore Mr. *Sparrow* on the *voir dire.*

Mr. *Attorney General.* We only submit to his being sworn—but if any question is put to the juror with respect to malice, he would not be bound to answer it.

Chief Justice. The court never can say that the law of the land permits any man to be sworn to answer a question, the answer to which will make him unworthy; and the present challenge is for malice.

Mr. *Burrowes.* Our object is to examine him as to a fact, in order to get him to acknowledge on his oath, that he is one of a society in which he has taken an oath

which makes him hostile to the Catholics of Ireland, and that therefore he has malice against the Traverser.

Judge Day. If he was to acknowledge having taken such an oath, he would lay himself liable to an indictment for having taken an unlawful oath.

Mr. *Burrowes.* He has not yet been sworn in chief, but on the *voir dire.*

Attorney General. I must object to his being sworn. The objection is, that he bears malice to the Traverser. It must be proved; a juror cannot be sworn to give testimony which sounds against him as a reproach.

Chief Justice. No man is bound to answer a question which would make him infamous.

Mr. *Burrowes.* We apply to his own testimony. I am free to own we cannot otherwise prove the malice, and if there be nine more Orangemen sworn, we will make the same objection. We appeal to the candor of the *Attorney General* whether the juror ought not to be set aside.

Mr. *Goold.* We withdraw the challenge.

William Sparrow—sworn.
Robert Orr—objected to by the crown.
Thomas Meade—objected to by the crown.
J. Lindsay—objected to by the crown.
Richard Williamson---objected to by the crown.
James Jameson---objected to by the crown.
Thomas Prentice—objected to by the crown.
Nicholas Wade—objected to by the crown.
John Hutton—sworn.
Wm. Humphries—objected to by the crown.
James Chambers—objected to by the crown.
Wm. Wood—objected to by the crown.
James Jackson—objected to by the crown.
Robert Armstrong—sworn.
Edward Clibborn—objected to by the crown.
Charles M'Kiernan—objected to by the crown.
Thomas Richardson—objected to by the crown.
Charles Pentland—sworn.
John Hamilton, called.

Mr. *Burrowes.* We have no legal objection to this gentleman; we only state that he has dealings in the Castle, and would merely submit whether as the pannel is so large the Counsel for the Crown would not desire the gentleman to stand by.

The Counsel for the Crown were silent, and Mr. Hamilton was sworn.

The Jury as sworn.

Benjamin Geale,
Peter D. Latouche,
Leland Crosthwaite,
John Orr,
John Duncan,
John Pepper,
William Sparrow,
John Hutton,
Robert Armstrong,
Edward Clibborn,
Charles Pentland, and
John Hamilton, Esqrs.

Mr. *Kemmis* opened the indictment.

Mr. *Attorney General.* My Lords and Gentlemen of the Jury. I cannot but congratulate you Gentlemen of the Jury, and the public, that on this trial of such considerable expectation, the day of justice has at last arrived; and I confess I am sanguine in the expectation that the result of the proceedings of this day will be to counteract and frustrate the designs of treason, and give a fatal check to those excesses to which faction and folly have of late so far proceeded. The case of the Traverser, Mr. *Sheridan*, which is now before you, lies in a very narrow compass, both with respect to the law upon which he is indicted, and with respect to the facts by which that indictment is to be supported. But the case connects itself with so many others, and such a variety of matters, that if I shall find myself under the necessity of trespassing a little longer on your time than it is my custom, or would be my inclination in other cases to do, you will give me credit to believe that I shall do so, with a view only to re-establish the peace of the country; that I shall do so, in the ardent expectation of allaying those discontents and abating that fever and ferment which treason and sedition have but too successfully excited in the minds of his Majesty's Roman Catholic subjects in Ireland.

Gentlemen, the project against which the present prosecution is levelled, is a project which you will find detailed in certain resolutions entered into by a particular assembly, under the denomination of a General Aggregate Meeting of the Roman Catholics of Ireland, held on the ninth day of July last, at Fishamble-street, in the City of Dublin. You will find *that* Aggregate Meeting

springing out of resolutions of a Committee which is well known (I am sure to every Gentleman that hears me) to have existed in this City, and which for the last eighteen months has been acting a distinguished part in this country under the name of the General Committee of the Roman Catholics of Ireland. When I talk of treasonable views being at the bottom of those projects to which I am about to call your attention; and when I say they are bottomed in treason and revolution, of which I have no doubt but I will satisfy your minds: let me not be misunderstood, for I do most firmly believe, and from my own personal knowledge could vouch it, that the great proportion of my Roman Catholic fellow subjects of Ireland who are loyal to their king and country, look with as much abomination and horror at the proceedings of those meetings as any of us can do, and look upon them as lawless, seditious, factious and unwarrantable proceedings taken as if under the name and by the authority of the Roman Catholics of Ireland. I will go farther, and I do most unequivocally declare, that a great proportion of those Roman Catholics who have taken an active part in the furtherance of those projects are loyal men, who mean nothing like treason or revolution; and of this I am satisfied you will be convinced, that such of the Roman Catholics of Ireland, as are of that description, have been unknowingly misled, blinded and duped by artifices, and have been made to act as instruments of those whose designs, if they understood them, they would abominate. There have been engaged in the furtherance of this project many young men of aspiring and ardent minds, whose passions have been inflamed by the desire to appear in political situations, actuated by the vanity of raising themselves into notice, and the gratification of hearing the applauses which follow in those assemblies, where they have been working the work of United Irishmen by seditious and unworthy speeches, calculated for separation and revolution without any worse intention than the gratification of their vanity, and without considering for a moment, that they were acting in a way dangerous to the public peace, and most diametrically opposite to the objects of the petition of the Roman Catholics of Ireland, of which they pretend to be the advocates. That is the view I have taken of the project to call a representation of all the states of the Roman Catholics of Ireland; and I will now call your attention to the reso-

lutions of that committee, assuming itself to be an aggregate meeting of the Roman Catholics of Ireland, and springing out of that general committee to which I also by and by, will call your attention. Here are the resolutions that were entered into at that meeting, held at Fishamble-street, on the 9th day of July last.

"Resolved, That being impressed with the unalterable "conviction of the undoubted right of every man to wor- "ship his Creator according to the dictates of his own "conscience, we deem it our duty thus publicly and so- "lemnly to declare our decision, that no Government can "inflict any pain, penalty, or privation, for obeying that "form of Christian Faith, which, in his conscience he "believes to be right."

That is the first resolution, the object of which you will see, is to impress upon the Roman Catholic population of the country, that they are under pains and penalties for holding the religious tenets they possess; and to throw dust into the eyes of those Roman Catholics who were made the dupes of the persons who were at the bottom of those resolutions. The resolutions proceed—"Resolved, "That we again petition the legislature for a repeal of "the laws affecting the Catholics of Ireland."—The propriety or right of petitioning the legislature with decency, and according to the laws of the land, no man in this country could or ever did deny: no man connected with the government of Ireland ever denied that right of the people. "That in exercising our undoubted right to "petition we will adhere to the ancient forms of the "constitution." Fully aware of the law they were about to offend, but at the same time expressing their obedience to that law. "That a Committtee of persons should "be appointed and requested to cause proper petitions to "both houses of Parliament, to be forthwith framed for "the repeal of the penal laws remaining in force in Ire- "land, and to procure signatures thereto, and to take "measures for bringing such petitions under the serious "consideration of the legislature, within the first month "of the ensuing sessions of Parliament." This was to be done, as if for the purpose of framing a petition for the Roman Catholics of Ireland, and to have signatures to be affixed to that petition, which was to be prepared for the legislature. But I now come to that part of the resolutions which requires your particular attention:— "And that said committee should consist of the Catholic

" peers and their eldest sons; the Catholic baronets; the " prelates of the Catholic Church in Ireland; and also ten " persons to be appointed by the Catholics in each county " in Ireland—the survivors of the delegates of 1793 to " constitute an integral part of that number; and also of " five persons to be appointed by the Catholic inhabitants " of each parish in Dublin." By this part of the resolutions the Catholics of Ireland were to resolve themselves into a committee of the whole body, constituting in point of numbers a meeting of not less than from four to five hundred persons, representing every state of his Majesty's Roman Catholic subjects in Ireland: the peers, the church, the laity, are all to be represented; in which meeting, not only the counties in Ireland were to be represented, but to which the Roman Catholics of the parishes of the metropolis were to send their delegates. The affairs of the Catholics by this resolution were to be managed by an interim government—manifestly those resolutions convey no other idea. This general convention was not to be confined to the mere matter of petitioning for a repeal of the restraining statutes; but when it met, it was to have the entire management of the affairs of his Majesty's Roman Catholic subjects in Ireland. By the laws and constitution, not only of this country, but of all well formed governments, the political affairs of the subject are entrusted to the lawful Parliament of the land. But if the people shall, at any time, raise up another representation for the management of their affairs, such conduct is a disclaimer of the law, and an usurpation of the authority of the crown. What object could such a meeting have? I would put it to the good sense and unprejudiced mind of every loyal Roman Catholic in the country when they come to consider the subject, to reflect, whether such a national assembly can be reconcileable with the principles and rules of law, as established in those countries; or with the principles of any law in any country? I would ask them, could such a monster be endured in any state in which the government has not abdicated its authority? It is against the fundamental principles of all governments, that the people should set up an authority to represent themselves independent of the executive power. It has been represented, that an assembly so respectable as that intended to be formed by those resolutions, could not act in any way contrary to the laws of the land, or to the safety of the public peace. It is not the mild and peaceable

characters in such assemblies that could guarantee the government for the integrity of the rest: those are not the persons by whom such meetings are swayed. Let me call your attention to that committee, out of which this assembly was to take its rise, and which we all recollect to have actively exerted itself for part of the last, and beginning of the present year. I appeal not to you gentlemen of the jury; but I address myself to every loyal and dispassionate Roman Catholic of the country, whether that committee, though nominally composed of many most respectable Roman Catholics, did not proceed to such excesses in the unrestrained abuse of all law and decency. Whether the seditious speeches in that assembly did not become so rank and coarse, that even the seditious Press of Dublin was ashamed to publish what had been spoken there—left chasms for that which was too bad for the Press of Ireland to publish—for the filling up of which the public were obliged to have recourse to the information of the printers. The best of the Roman Catholics by whom those meetings were attended, were scandalized, and cried out at the proceedings. If at this period there was any misconduct in the Irish government it was, that it did not interfere sooner to check those associations.

In the month of February last, when it was to be hoped, and when every man wishing well to the country, expected that this assembly would terminate its sittings, and put an end to those proclamations of discontent and disaffection which it had been spreading over the country: then it was that a circular letter was written by the members of this assembly to renovate this meeting, by adding ten representatives from each county of Ireland.

It was then, and not till then, that the government found it necessary to interpose, but by no measure violatory of the law: it proceeded by notifying to the magistrates that the proceedings of the committee and the meeting of the intended assembly were against the statute-law of the land; and that in case such assembly took place, recourse should be had to the law. This was the only act of government, and it had the desired effect: treason and sedition were checked, and for a time abandoned: After a time this committee met, and met under different circumstances: many of those loyal and respectable characters who had receded, and not attended during the commission of those excesses of the former assembly, resorted

back to it, being led to believe that the legitimate object of the meeting was solely for the purpose of petitioning Parliament. The attendance of those characters was a restraint upon the committee which was not interfered with from that time to the conclusion of its sittings. But it seems that committee had entered into resolutions for the aggregate meeting which was afterwards held, on the 9th day of July last; and was composed in part of the very members of that committee who had been members, and active ones, during the time of its greatest excesses. I therefore think, when we consider the nature of that meeting—when we consider the numbers and characters of which it was composed—when we notice the source from which it sprung, it is impossible to conceive but there was a strong appearance of treason and revolution. No doubt there were well meaning and innocent men in that meeting; for it was the project of those who were at the bottom of the sedition and treason, to hold out to the loyal Roman Catholics of Ireland the necessity of such a measure for the furtherance of their petition to Parliament. This pretence will make it necessary for me to call your attention to the nature of the petition, which it is alleged and pretended was to be the sole object of this national convention; and for this purpose I think it may be of service, not only to the subject of the present prosecution, but also serviceable in setting right the minds of such of my Roman Catholic countrymen as have been so grossly and shamefully misled and abused, by the artifices of those designing and seditious characters, who would impose upon the loyal Catholics of Ireland in furtherance of their rebellious and revolutionary schemes, in stating very shortly what the actual situation of the Catholics at this day is, and what is the subject of the petition, which is made the pretence for convening this national assembly. For this purpose I will go back to the year 1778, and state the situation in which the Roman Catholics of Ireland then were, and compare their then disabilities with those under which they are at present; and then you will see what can be the object of now calling a national convention to prepare a petition for the repeal of the penal code. In the year 1778, a period in the recollection of many, the Roman Catholics stood thus with respect to landed property: they were disabled from acquiring any interest for a longer term than thirty-one years—with respect to estates, they were disabled

from parting with them but for money, and that to a protestant. Their property was to go in gavel amongst their sons. The eldest son was enabled to reduce the estate of his father to a tenancy for life, and vest the fee and reversion in himself. They were liable to a variety of personal disabilities: they were incapable of holding any office, civil or military. They could not be in the army, or in the navy; they were not admissable to the profession of the law: they were deprived of the elective franchise. Their clergy, regular and secular, were subject to a variety of disabilities. In the year 1778 they were not entitled to keep a horse of more than five pounds value, if the government thought fit to interfere and take it from them: they also were under various other disabilities, which it is not necessary to repeat. In the year 1778, the Catholic acquired a permanent interest in land for the term of 999 years, on which a rent was reserved—the stake in land which he acquired was made disposable as the protestant's. The law that enabled the son to convert the estate of the father into a tenancy for life was repealed: so the law remained with respect to the Catholics in 1778. By the 21st and 22d of the present King they were further relieved, and entitled to acquire estates by grant, limitation, or descent; and they were thereby relieved from a variety of the penalties and forfeitures which they were subject to by the penal code. They were, however, liable to the provisions of the test act; and were not admissible to any civil or military situation. But in the year 1793 a statute was passed, to which I will call your attention, because it appears necessary to meet the object of those persons who would seditiously insinuate and impose upon the Irish Catholics, that at this day they are subject to all the penalties of the penal code. This statute will give a distinct view of the real situation in which that body of this country at present stand with respect to restrictions, and what the petition ought to contain. It is entitled, "that his Majesty's subjects, being papists, or persons professing the Catholic religion, or educating any of their children in that religion, shall not be liable to any penalties, forfeitures, disabilities, or incapacities; or to any laws for the limitation, charging, or discovering of their estates and property, real and personal: or touching the acquiring of property or securities affecting property, save such as his Majesty's subjects of the Protestant religion are subject to." All such oaths as require the Ca-

tholic to take an oath in order to enable him to vote for members of parliament; or purport to deny that the person taking same is a papist. or educates his children in the Popish religion, are repealed. They are by this statute enabled to hold, exercise, and enjoy all civil and military offices or places of trust under his Majesty: to take degrees or professorships, or to be masters or fellows of any college, to be hereafter founded in Ireland, under certain restrictions. They may be members of any lay body corporate. They are capable of being elected professors of medicine, upon the foundation of Sir *Patrick Dunn;* they are eligible to the profession of the law, so that this statute goes to put almost an entire end to all the disabilities that ever existed against the Catholics of Ireland, and to put them on an equality with their Protestant fellow-subjects. The statute proceeds, however, to reserve the test act, by which, both in England and Ireland certain oaths are required to be taken, and certain qualifications, as necessary to be performed by persons who shall hold offices of trust in the state. But the statute goes on to dispense with even the test act as to all offices civil and military, and the exercise of the elective franchise, save only as to certain offices which are specifically enumerated. I will read them, that it may be distinctly understood what is the real extent of the difference between his Majesty's Roman Catholic and Protestant subjects. The statute shall not extend to any person to sit or vote in either house of parliament—to be lord lieutenant, or chief governor of Ireland; lord high chancellor; keeper or commissioner of the great seal; lord high treasurer; chancellor of the exchequer; chief justice of the king's bench or common pleas;—or baron of the exchequer; judge of the admiralty; master or keeper of the rolls; secretary of state; keeper of the privy seal; vice treasurer or deputy vice treasurer; teller or cashier of the exchequer, or auditor general; lieutenant or governor, or custos rotulorum of counties; secretary to the lord lieutenant; lord deputy, or other chief governor of Ireland; member of the privy council; prime serjeant; attorney general; solicitor general; second and third serjeants at law; kings counsel; master in chancery; provost of Trinity college; postmaster general; master and lieutenant general of the ordnance; commander in chief; generals on the staff; sheriffs and sub-sheriffs, or any officer, contrary to the rules, orders and direc-

tions made and established by the lord lieutenant and council.

Let it not be imagined that I am undervaluing the claims of Catholics to be admissible to fill those offices: to men of rank and consequence in the country it is a laudable object, that they should petition to be relieved from those disabilities. God forbid I should undervalue such situations, and not consider them objects of ambition to the Roman Catholics of Ireland. But what is to be the subject of the petition which has made so much noise, and so much clamour? That the Roman Catholics should be ardent to be relieved from the disabilities they at present labour under, I am ready to admit, and it ought to be, and can be the laudable ambition of noblemen and gentlemen to get rid of those unpleasant circumstances. What then can the object of this petition be? To be relieved from the test act that disqualifies the Roman Catholics from certain situations in the government, while all other offices are actually open to them. What? is it necessary, in order to prepare a petition to the legislature, for a redress of those alledged grievances, which any man in the land, capable of reading and writing, could frame, to call on an assembly, a national convention of the Catholics of Ireland? And when you recollect that the petition, which contains all the real complaints of the Roman Catholics, has been already framed, and again and again presented to the legislature, and received, and acted upon, and discussed by some of the greatest characters that ever adorned a country—a petition to which no objection was ever urged of want for form or want of substance—a petition which contained all the complaints of the Roman Catholics of Ireland. Is it not mockery at this day to say, that in order to have that petition again presented to the legislature, it is necessary for the Catholics of Ireland to call a national assembly of from four to five hundred persons to sit in the metropolis of this country, from month to month, and from day to day? Such proceedings cannot be reconciled with the object avowed. It is not the loyal and honourable Catholics that are seeking for such a convention, but there remains in this country, and notoriously exists a remnant of those United Irishmen, who are attempting to carry by artifice what they could not effect by force, and which they attempted to carry by assault in 1798 and 1803; I speak to the experience of every one that hears me. Is is not notorious,

that such assemblies are not swayed by the members that compose them? It is the experience of every day, that they are governed by the seditious and the factious, by whom the moderate and the weak are overcome. What guarantee is there to the public, and to the peace of the public, that such an assembly, if permitted to exist in this country, or in any country, would conduct itself with moderation? Under what control could such an assembly be when once met? Under no control, but that of its own discretion. Look to the parliament of those countries, which rank and fortune and talent form; yet that assembly, under the wise caution of our constitution cannot meet but under the King's writ. It can assemble but where the executive authority pleases to direct it to do so. When it is assembled, it can continue no longer than the same authority pleases. Yet in Ireland we are to have a national convention to meet—self-created, under no control of any authority or law but its own discretion, and this assembly to consist of nearly five hundred persons. I put it to your good sense, gentlemen, whether such an assembly as this, in any country in the world can be tolerated; or if such a national convention can be consistent with the fundamental principles of any law? I put it to the common sense of the Roman Catholics of Ireland, themselves, whether the government of any country would be worthy the trust put in them by the constitution, if they would stand by when such assemblies were meeting, and not call upon the law, if it was the law; to put an end to such associations? The government of Ireland thought itself bound to do so: it has resorted to the law, and, it is induced to hope, effectually. The present trial is not a contest between the Catholics of Ireland and the government. There is no such contest—it is a contest between the law of the land and those seeking to violate that law, and to disturb the public peace. If, gentlemen of the jury, the law, which is in your hands, and in the hands of the court, will not put and prevent such assemblies from meeting, the government cannot prevent their meeting. The preventing such meetings has been said by the seditious press of Ireland, and asserted by the seditious orators of the country, to be an attack made by the government of Ireland on the right of the public to petition the parliament. What? Because the government applies to the law of

the land, to interfere and prevent a national assembly from sitting in the heart of the city of Dublin, shall it be said that the government are interfering in the undoubted right of the people to petition; and this, because they called upon the law to say that those persons shall not have a parliament of their own? And therefore I do believe, and would wish to convey that belief to the minds of my loyal Roman Catholic brethren of Ireland, that they have been imposed upon, deceived and misled; and have, by paying too implicit an attention to those, whose seditious oratory was calculated for that purpose, forgot the exercise of that good sense, which they were so capable of exerting. See what it is they have to petition for, and how the petition ought to be conducted, and how it is possible that a convocation of such an assembly, amounting to near five hundred people, can be mediately, presently, or remotely necessary to forward a petition to the legislature which has been again and again before Parliament, and with which it never was the intention of any of the members of his Majesty's government to interfere. Gentlemen, I will beg leave to call your attention, and that of the Court to the statute under which it will appear most clearly and demonstratively, that whether this assembly be founded in treason and revolution or not, that the convoking of such an assembly is, nevertheless, contrary to the statute law of the land.

Antecedently to the enactment of the 33d of George 3d, chapter 29, under which statute the Traverser is now to answer, an attempt had been made by certain visionary politicians in the Northern parts of Ireland, to have similar assemblies to cover the political objects they then had in view. The authors of this measure were perhaps some of them revolutionary in their intentions: but many were honest minded men who intended no harm; but the object of the others was to forward their own private views, and that made them anxious to have an assembly, which being an assembly of delegates, would from that circumstance give considerable weight to the prosecution of their objects, and that the authority to be derived from the numbers by which this assembly would be composed, would give a strength and authority such as would sway the public mind, and force the Legislature into granting their desires; the Legislature saw the danger to the public peace, and therefore it was,

that the 33d of the King was passed. The preamble of that statute to which I will call your attention will give you some light as to what is the extent and force of the enactment contained in it. It is this;

"Whereas the election or appointment of assemblies, purporting to represent the people, or any description or number of the people of this realm, under pretence of preparing or presenting petitions, complaints, remonstrances, and declarations, and other addresses to the King, or to both, or either houses of Parliament, for alteration of matters established by law, or redress of alleged grievances in Church and State may be made use of to serve the ends of factious and seditious persons, to the violation of the public peace, and the great and manifest encouragement of riot, tumult, and disorder; be it declared and enacted, that all assemblies, committees, or other bodies of persons, elected, or in any manner constituted or appointed to represent, or assuming or exercising a right to represent the people of this realm, or any number or description of people of the same, or the people of any province, county, city, town or other district within the same, under pretence of petitioning for, or in any other manner procuring an alteration of matters established in Church or State, are unlawful assemblies."

That is to say, they are of a dangerous tendency: and that they are so, is the plain and obvious suggestion of common sense. I would beg leave to ask what common sense would suggest as a remedy (for that such meetings may be made use of for the purposes of faction and sedition, and lead to a violation of the public peace cannot be doubted,) to prevent the existence of such assemblies, but by such an appeal to the laws of the land, as the Administration of Ireland in the present instance has made, and I am sanguine to hope made successfully. With respect to all other assemblies, their legality must depend upon the acts they do: and though they should meet legally, yet if in their proceedings they act illegally, they then become unlawful assemblies. But as to meetings which the statute is directed against, they are unlawful the moment they assembled, because they are a delegated assembly, and of a dangerous kind, and should not be permitted to exist for a moment, which was the reason the Legislature of Ireland interfered. This is the wise provision made by the statute, that such a

delegated assembly should be illegal, without suggesting what they were to do, in order to make them illegal by their proceedings; the law says such a delegated assembly shall be dispersed; and any "Mayor, Sheriff, Justice of the Peace, or other Peace Officer are required to disperse all such unlawful assemblies, and if resisted to enter into the same." The moment they assemble, their meeting is declared by the statute to be illegal, and can it for a moment be considered that the Peace Officers shall wait to see whether they were meeting under a pretence before they would interfere to disperse them? It is their meeting as delegates, that renders them illegal, and not any acts they should do when they were assembled. This is further demonstrated by the second section of the statute; for it is made a high misdemeanor for any person to publish, or cause to be published, any notice of any election to be holden, or of any manner of appointment of any person or persons to be representative, or representatives, delegate or delegates of the inhabitants, or any description of the inhabitants of any province, county, city, town, or district, or for any person to attend, or vote, or act in the choice or appointment of such representatives or delegates. The manifest object of which is to prevent the existence of such asremblies, and to stifle, the attempt to have such meetings, in the cradle. If that was the meaning of the Legislature, and what other meaning could it have, it must be admitted that the second section of the statute clearly warrants a prosecution for voting at, or selecting delegates: and that the meeting of such delegates render it an unlawful assembly within the meaning of the statute, notwithstanding such assembly should not proceed to do any act whatever. The only ground on which a cavil can be made by the Counsel for the Traverser will be on the word *pretence*. I will go through the statute and remove every shadow of doubt on that subject, and will satisfy your minds that no doubt can remain with respect to the construction of the act; the assemblies recited in that statute, are assemblies purporting to represent the people, under pretence of preparing or presenting petitions to Parliament for the alteration of statutes established by law: and then comes the enactment, that all assemblies, committees, or other bodies of persons elected, or in any manner constituted or appointed to represent, or assuming, or exercising a

right to represent the people of this realm, or any number or description of people, or the people of any province, county, city, town, or other district within the same, under pretence of petitioning for, or in any other manner (all in the disjunctive) procuring an alteration of matters established in Church or State, are declared to be unlawful assemblies. It is contended, or it will be contended, that the word pretence as used in this statute must mean false pretence, and that therefore a delegated meeting such as are described in the act as assembling for the purpose of petitioning the Legislature, was such a meeting as could not be said to assemble under a false pretence, and consequently not within the view of the statute; I will shew I think demonstratively, that the word pretence is used by the Legislature in a legal and proper sense, not meaning false pretence, but claims for assumption; and then the meaning of the Legislature will run thus—that all delegated assemblies claiming or, or assuming to themselves the right to represent the people, or any number or description of people under pretence of petitioning, or procuring an alteration in matters established in Church and State are *unlawful* assemblies. Where the Legislature intends to make the doing of any act under pretence, a false pretence, it is under the necessity of using the epithet false, in order to explain that such is the intention of the statute. So it is in the 26 Geo. 3d chapter 37. if any person or persons knowingly, or designedly, by false pretence, or pretences, shall obtain from any person, money, goods, wares, or merchandize with intent to cheat, there the intent is laid, and the word false is necessary to the conviction of the party. Your Lordships will see by the 32d Hen. 8. chapter 9. against maintenance, where it is enacted, that no person shall bargain, buy or sell or by any ways or means, obtain, get, or have any pretenced rights, or titles, unless the setter hath taken the profit one year before; and my Lord Coke's comment on the word pretenced, or pretended, illustrates the meaning which we contend the Legislature had in framing the act of the 33d Geo. 3 c. 29. As to the object of using the word pretence there can be no doubt it is used in the same sense with that of the 13 Charles 2 chap. 5. in England, the title to that statute is very similar to the present: it is an act against tumultuous meetings, under pretence of redress of grievances, and bring-

ing up their petition by excessive numbers, by which the public peace was endangered. The words of the statute are, that no persons shall repair to his Majesty, or to either houses of Parliament under pretence of delivering any complaint, exceeding the number of ten: the pretence of petitioning in that statute is not the offence: but the assembling and proceeding to present the petition by a larger number than that specified by the statute, is made an offence by which the parties are liable to a penalty of £100 and three months imprisonment. It is a preventive statute, to suppress that from which mischief was likely to ensue: and if any number exceeding ten, if only eleven persons went, they are guilty of a breach of the statute law. And if that be the law of the land in England, here is also a statute in this country in which the word false is not used conjoined with pretence, but the word pretence is used for claim or assumption. If there was not common sense and authority to explain the sense of this word, the party would work the object he had in view and not the object of public benefit, but one diametrically opposite. The statute enacts, that in two instances those assemblies shall be unlawful: if delegated under pretence of petitioning—this it will be contended for, must be a false pretence, and that if the intention be really to petition their meeting by delegation is no offence. Let me point your attention to the second part of the same sentence—"Or in any other manner procuring an alteration of matters established by law in Church or State." That is under pretence of so doing. An assembly by this statute whether met under pretence to procure an alteration in the state by petition, or in any other manner, is an unlawful assembly: that is the plain meaning of the statute. These meetings are dangerous in their constitution, and tend to the encouragement of disorder and riot, and if they do meet to procure an alteration in the state by petition or otherwise, they are an unlawful assembly and may be dispersed. If after this unequivocal proof of the intention of Legislature, there can be a shadow of doubt, let me call your attention to the saving clause which follows, and which will unequivocally remove such doubt—nothing better can shew the intention of the Legislature than to look into what is saved and excepted in the statute—"Save and except the Knights, Citizens and Burgesses, elected to serve in the

Parliament, and except the houses of convention duly summoned by the King's writ! If the statute extended only to assemblies meeting under false pretences, this saving clause was necessary.

Judge Day. That helps towards the consurction of the act: but it was an unnecessary saving clause.

Mr. *Attorney General.* It shews that the legislature meant to include every other meeting or assembly for alteration of matters established by law. In order to support the objection which will be made by the traverser, it must and will be argued for him that the prosecution was premature, and that no man can be convicted under the second section of the statute, until it has been first established whether the pretence they met under was a false pretence or not. It only remains for me now to call your attention to the fourth clause of the statute, which will fully answer the objection, and which enactment is, that "nothing herein contained shall be construed in any "manner to prevent or impede the undoubted right of "his Majesty's subjects of this realm to petition his Ma-"jesty or both houses, or either house of parliament for "redress of any public or private grievance." This provision was made in the act, in order that no construction should be put upon the clause that would carry it beyond the true spirit and intention of its enactment. But it can never be construed as a saving clause out of the act. The enacting part of the statute is imperative, and independent of the saving clause, which contains a popular exception in favour of the right of petitioning at common law. It declared that which it literally true, that though it did put an end to this novel claim or assumption of petitioning by delegation; nevertheless, it was not to be understood that it afforded any ground from making a construction derogatory of the subjects' right of petitioning: that right which had been adopted from the days of *Magna Charta* to the present time, and exercised in the only mode, in which it is now used in England: a country, where the subjects' right are perhaps better understood than in any other nation on the face of the globe. The legislature has declared, they do not mean to interfere with that; it is the ancient and legitimate mode; but by the statute now under consideration, they intend only to put a stop to the new and dangerous mode of petitioning by a delegated national convention. They did not mean to say that the

ancient right of the subject shall be interfered with: that is the meaning of the proviso, for otherwise it would have been preposterous to make it a saving clause out of the statute. But I will go further; if the construction contended for was to be admitted, what would be the effect? It would be to dot he reverse of that which the legislature intended; for antecedent or subsequent to the passing of that act, it could never have been understood that either house of parliament would receive such a petition from such a body. It has been conceded, even by all those that contend for a national convention, that a petition could not have been received from such a body by the legislature. If those who contend that this delegation was not contrary to the statute, were to be borne out in their opinions, the act would make these assemblies lawful, and for the first time a convention of this kind would be authorised by law, and would be called an enabling and not a restraining statute. By virtue of the statute, if so construed, this Convention might say they could go to Westminster with the act of parliament in their hands, in order to shew they were enabled to do that which was never authorised by the legislature, namely, to carry up a petition te either house of parliament. It would, indeed be cavil and mockery and false pretence, to say that the Catholic petition is the scope of those proceedings. Those persons well know that they are acting contrary to the law of the land, but are carried away by their own passions and by the artifices of those whose design and object is to assemble a national convention in Ireland, not for the purpose of forwarding the petition of the Catholics of Ireland, but for the purpose of bringing about a revolution in the country. But it is nonsense to say that a national convention is necessary for the purpose of the Catholic petition. The view, and sole object of the Catholic petition is to be relieved from the operation of the test act. The Irish Catholic stands upon the same footing with th e Roman Catholics of England. I am far from doing the Catholics of Irereland an injury, when I say, that in point of wealth, and rank, and situation, the English Catholics are not inferior to them. They are not only subject to the same incapacities as the Irish Catholic, but the Roman Catholics of Ireland are exempt from disabilities to which the English Catholics are subject. The latter have the same object for petitioning, and they have

the same desire, but I would call the attention of the Roman Catholic of Ireland to the conduct of those of England. - They have petitioned parliament for the penal laws affecting their body; they are equally anxious about the manner in which they would recommend their petition; but in the way they applied all was deceit and decorous.

Why do the Catholics of England not pursue the same line of conduct, when they have not only the same, but a greater object in view. You will understand well it is not so; the subject of the repeal of this last act has been before Parliament; the question of the repeal of those penal laws has been advocated by men of the first rank, weight and ability, the greatest statesmen, and some of the first characters of the other county. They say this is the time they ought to be repealed, or modified; but there is still a majority in the house of parliament that think the policy of those laws should not be departed from. Between them the question lies. But if any Catholic of Ireland has the idea that this question is to be caried by force, I will tell him that he is a traitor in design. If it is in the contemplation of any Catholic of Ireland to carry this measure by force, he is not only a traitor in design, but has forgot the duty of his allegiance, from which he cannot part but with his life. And any attempt by force in favour of that measure is a violation of that allegiance, and an act of high treason. With such persons I hold no communication—with them I only hold the language of defiance. To those of my own Catholic countrymen who are loyal to their King, and who govern themselves according to the religion they profess, I propose this question, Whether their cause can be served by such *National* conventions as these, and the question of their claims being before Parliament, whether that question upon which so many great men have differed, is to be carried by menace or dictation? I would put it to the good sense of every Catholic of this country, whether a question upon which so many men both in and of parliament have entertained different opinions is to be carried by the low and vulgar abuse of the Irish Press, and the shameful scurrility of those factious Orators who speak on behalf of the Catholics of Ireland, and of their petition? And whether such proceedings can

weigh in favour of their petition in the parliament of the Empire? Or that those that are against the measure can be swayed by the lawless and seditious proceedings assumed to be carried on by the Catholics of Ireland to obtain the object of their petition. I do implore my loyal Catholic countrymen to disclaim those proceedings. I do believe the best part of the Catholics abominate the proceedings. I should be sorry their petition would go to parliament standing on those proceedings.

I have taken a view of the project against which this prosecution is levelled. As to the law it is lawless—as to the constitution it is unconstitutional.—It is inconsistant with principles of the law—it is a mere pretence not conducive to the Catholic petition—and in the same proportion as those proceedings advance towards disorder, the probable success of the petition must be receding. If the Traverser is found to have been proceeding in a way not authorized by the law, he must be found guilty. I am well satisfied that the government of the country would be wanting in their duty to the preservation of the public peace, not to put this question into a course of legal decision, whether such a thing shall be tolerated as a national convention representing all the estates of the Catholics of Ireland? And that, under the colour and most flimsy pretence, of preparing a petition to parliament, for the repeal of the test act which has been repeatedly discussed and upon which the legislature has so often decided.

Gentlemen of the Jury.—I am sorry for having detained you so long, but I hope the decisson this day will guard against similar attempts for the future and a repetition of the offences which have so universally disturbed the peace and tranquility of the country.

Evidence for the Crown.

John Sheppard, examined by the *Solicitor General.*

Q. What situation are you in?
A. I am peace officer.
Q. In the head police establishment?
A. Yes.

Q. Were you directed to attend any meeting in Liffey-street chapel last Summer?

A. I was.

Q. Can you recollect what day it was?

A. Wednesday the 31st. of July.

Q. Do you know *Doctor Sheridan*?

A. I have seen him there, and saw him in Court this day.

Q. Point him out?

A. There he is.

Q About what hour did you go to the meeting?

A. Between twelve and one.—It was twelve when I arrived and they had assembled.

Q. Was there any meeting at Liffey-street Chapel that day?

A. There was; and what I consider a large one.

Q. How many do you suppase were present?

A. I would not attempt to speak of the number: the lower part of Chapel was full.

Q. Did you see any person in the chair?

A. I did: *Doctor Sheridan.*

Q. Did you hear any person address Doctor *Sheridan* in the chair?

A. Mr. *Kirwan.*

Q. Do you recollect what was the nature or substance of his first address?

A. The first motion was for a petition the to Prince Regent and both houses of Parliament for the removal of the penal laws against the Catholics of Ireland or words to that purpose.

Q. Are you sure that was the substance?

A. I am.

Q. Was there a question put on that motion?

A. There was.

Q. Who put it?

A. Doctor *Sheridan.*

Q. Was that motion carried?

A. A. Unanimously.

Q. Do you recollect any other motion made by Mr. *Kirwan*, at that meeting to Doctor *Sheridan?*

A. A motion for appointing a committee of five.

Q For what purpose?

A. Of representing the parish in a general committee

of the Catholics: the words may not be exactly as I state them; but that is the meaning.

(Mr. Burrows;—take down his words.)

Q. *Solicitor General,* Do you say those words are the substance of the motion you heard made?

A. It was the substance; I omitted to say to prepare or present a petition, and to transact the business of the Catholic Inhabitants of the parish.

Q. *(Court.)* Do you mean that was part of the motion?

A. Yes my Lord.

Q. *(Solicitor General,)* Was it stated to your recollection at that assembly whether that motion was was made in consequence of any previous meeting: did you hear that at that meeting?

A. No, I did not.

Q. Was the motion for appointing five persons put to the meeting?

A. It was.

Q. Was it carried?

A. It was.

Q. Who put the question?

A. Doctor *Sheridan.*

Q. Were any proceedings adopted in consequence of that motion being carried?

A. There was.

Q. What was it?

A. There was some difficulty as to the mode of election, and it was proposed that seven persons of the people then present not candidates for the committee should be chosen; and that them seven should retire to select five from a list that was saisd to be given.

Q. Did you see any seven persons appointed?

A. I did not, I saw part of them.

Q. Did you see any persons retire after that?

A. I did.—I saw some retire.

Q. Was that proposal carried?

A. It was.

Q. Did those persons that you saw retire, afterwards return to the meeting?

A. I saw but two of them return; my situation was such that I could not see the half of the persons there. I was in the gallery over them.

Q. When they returned what did they say or do?

A. The persons that retired handed in a list, I believe.

Q. Who did they hand it to?

A. To Doctor *Sheridan.*

Q. Was it a paper they handed in?

A. It was: a slip of paper.

Q. What did Doctor *Sheridan* do on getting the slip of paper?

A. I believe he handed it to another.

Q. Are you sure of that?

A. No I am not sure.

Q. Was the paper read after that?

A. It was.

Q. Were there any names read from it?

A. There were five.

Q. Do you recollect what the five names were?

A. Doctor *Sheridan* first.—Mr. *Kirwan.*—Mr. *Taaffe.*—Mr. *Sweetman*—and Mr. *Shiel.*

Q. After their names were read out did Doctor *Sheridan* continue in the Chair?

A. No Sir he was removed from the chair.

Q. Who took it?

A. Doctor *Burke.*

Q. When Doctor *Burke* took the chair what was done?

A. He put the question on Doctor *Sheridan's* election as one of the committee, and it was carried unanimously.

Q. After that, did Dr. *Burke* continue in the chair?

A. No, Sir.

Q. Who went into the chair?

A. Doctor *Sheridan.*

Q. Was there any vote put as to the other four persons?

A. They were all put by Doctor *Sheridan.*

Q. Were they carried?

A. Yes: they were carried unanimously, with one exception.

Q. When those votes were carried, did you hear any persons address the chair?

A. I did.

Q. Who were they?

A. The members of the committee.

Q. Do you mean the persons whose names you heard read out?

A. Yes.

Q. What was their address?

A. Expressing their thanks for the honour being done them.

(*Court*) Name the persons that addressed the chair?

A. Mr. *Kirwan*, Mr. *Taaffe*.—Mr. *Sweetman* was not present, as I understood by a friend thanking the assembly in his name. Mr. *Sheil* was in England, and that was the reason he was objected to?

Q. (*Solicitor General.*) As soon as these thanks were returned, was any thing done: did Dr. *Sheridan* leave the chair?

A. He did, and Mr. *Taaffe* took it.

Q. When Mr. *Taaffe* took the chair, was there any motion made to him?

A. A motion for the thanks of the assembly to Doctor *Sheridan*, for his proper conduct in the chair.

Q. That motion was carried?

A. It was.

Q. Was there any thing said by Doctor *Sheridan*.

A. Nothing, except thanking as the others did, and promising his warmest support, in the same maaner as the others did.

Q. You say the motion was to represent the parish, what parish is it?

A. Mary's-street parish, I believe.

Q. Was there any other business done or attempted at the meeting?

A. Not that I could see: Doctor *Sheridan* was in the chair when I went in.

Q. Was any other motion attempted to be made to him?

A. No.

Q. Were you on the ninth of that month at a meeting in Fishamble-street?

A. I cannot swear. I have been at a great many of them.

Cross-examined by Mr. Burrowes.

Q. What religion are you?

A. The established church.

Q. Then you did not go to the chapel in Liffey-street as one of the meeting?

A. No.

Q. Then the meeting was open to every person of any religion?

A. It was.

Q. No concealment whatever?

A. None.

Q. It was quite open: no abuse of any individual, or of the government?

A. Not a word.

Q. Or any thing seditious?

A. Not a word: from the respectability of the meeting, I would not expect to hear any such thing.

Q. Do not you believe it was their object to petition parliament?

A. I do believe it.

Q. And no other object?

A. No other object.

Q. Do not you believe the resolutions that were passed were taken down in writing?

A. I do believe they were read from a paper.

Q. Read those two resolutions; do not you believe those are the words? (Here Mr. *Burrows* handed the witness his brief, which the witness read?)

A. I believe they are the words of the first resolution.

Q. Read the second resolution in the brief, do not you believe those were the words of the second resolution?

A. No, I do not: it is not as full as the second resolution.

Q. Are you certain there were other words?

A. There were a great many more.

Q. Could you swear to the words *represent* them?

A. I could not.

Q. You are positive *to present* was in it?

A. To present or prepare.

Q. Then when you said you meant to say present or prepare, you did not mean to say *represent* was in them?

A. I did not.

Q. And the resolutions were read out of a written paper?

A. They were.

2. Do not you believe that paper could give a better account of the resolutions than you can?

A. To be sure.

Q. Did you say any thing about transacting business?

A. I did.

Q. Did you not this moment say that the object of the meeting was for the purpose of presenting or preparing a petition to parliament, and nothing else; and do not you believe that the word *business* meant the preparing the petition?

A. I do not understand the question.

Q. You have said on your belief, that the object of the meeting was for the purpose of petitioning; if any thing was said about doing the business do not you believe it was for preparing the petition. Tell what you understand by doing the business.

A. It was in contemplation to appoint five persons, and those five were to present or prepare a petition, and to transact the other business.

Q. On your oath was there any other, and what business mentioned.

A. There was no business mentioned there but what I have already mentioned: nothing but about petitioning.

Q. Had they any other business there as you believe?

A. I believe not.

Q. Can you mention any business that was spoke of there, but about petitioning?

A. I have repeated there was a committee of five.

Q. Did you hear any other business talked of?

A. No. The five were to be considered as a committee to prepare or present a petition, and transact the other business.

Q. Did the resolutions that you heard read state where any other business was to be transacted?

A. No.

Q. Did it mention where the petition was to be prepared?

A. I do not recollect exactly.

Q. You swear positively it was resolved to appoint those people to transact other business?

A. I swear they were to prepare or present a petition, and to transact other business.

Q. What parish was this in?

A. I understand Liffey-street chapel contains three

parishes; what I do not know I will not answer on my oath. I understand it is in the parish of St. Mary.

Q. Do not you believe the chapel is in the parishes of St. George, St. Thomas and St. Mary?

A. Yes.

Q. Then it was the inhabitants of those three parishes?

A. I cannot swear that.

Q. Did you take any thing down in writing of the contents of these two resolutions?

A. I did.

Q. Where is it?

A. I have it not now.

Q. When did you last see it?

A. I cannot say. I have not seen it this week.

Q. When did you last see it?

A. I believe about ten days ago.

Q. Did you know about ten days ago that you were to come forward as a witness?

A. I did.

Q. Did any person desire you to leave your written memorandum at home, and trust to your memory?

A. I was not; for what good would it be to have brought a memorandum that I had taken on the spot.

2. You had it a week ago, and you come forward with an imperfect recollection of its contents—is that your evidence?

A. No.

2. What is your evidence? Who did you give the paper to?

A. I did not give it to any body; I believe it is in my desk; if I had not mislaid it I would have had it here.

2. Did you look for it?

A. I did.

2. Did you look into your desk?

A. I did.

Q. And because you mislaid it you did not bring it?

A. Yes; they were but short notes, and I have lost or mislaid them.

2. (*Court.*) You say you had it in your desk?

A. Yes, my lord: it may be in it—it was but small.

2. (Mr. *Burrowes.*) Were you not sent to that meeting to take an account of what passed, and afterwards to prove what passed?

A. Yes, I was.

2. Did you tell the persons that sent you at this time the import of those resolutions?

A. I told those who I had a right to tell it to.

2. Who was that?

A. The magistrates.

Q. Did you give them a copy of the notes, or did you shew it to them?

A. I believe I gave them a written report as is usual with me?

Q. Was the report in your own hand writing?

A. It was.

Q. Do you believe it has been destroyed?

A. I do not.

Q. To which of the magistrates did you give that report?

A. Alderman *Pemberton*, Counsellor *Hare*, and Major *Sirr*.

Q. Will you swear positively that you gave that written report to some of them?

A. I only say I may have made a report in writing.

Q. Do you believe you did?

A. I do.

Q. Could there be a doubt but you, who were sent to report and testify the proceedings at that meeting, would be called upon to give evidence.

A. I believed I would.

Q. Which of the three magistrates was it by whom you were sent to the meeting?

A. I sometimes receive directions from the magistrates, and sometimes from the chief magistrate.

Q. These general orders did not come down from Heaven; you mentioned no one—was it from Major Sirr you got those instructions?

A. Any instructions I got on that occasion were from the chief constable, Mr. *Farrell*.

Q. Did you swear informations against Mr. *Breene*.

A. The informations I swore against Mr. *Breene* were on account of hearing his name.

Q. Did you positively swear he was at the meeting?

A. I did not.

Q. Before whom did you swear?

A. The Lord Chief Justice. I did not see Mr. *Breene*. The names of the others I took in the same way.

Q. Did any body else swear against him?

A. I do not know.

Q. Do not you know he was arrested on your information?

A. I do not; but I know he was arrested, but not on my information, I am certain: There were other informations sworn.

Q. Were you a constable of St. Paul's parish?

A. Never.

Q. What was the time passed at the meeting?

A. I do not think it was an hour.

Q. Was it half an hour?

A. It was.

James M'Donough, examined by Serjeant *Moore*.

Q. You are in a public employment in the city of Dublin?

A. Yes, I am.

Q. What are you?

A. Clerk in the head office of police.

Q. Were you at any time in the month of last July in Liffey-street chapel?

A. I was.

Q. Do you remember the day of the month?

A. The 31st of July last.

Q. What time of the day was it?

A. Between twelve and one o'clock.

Q. Was any person with you?

A. Yes, *Shepperd*.

Q. The last witness?

A. Yes.

Q. You and he went together?

A. Yes.

Q. Did you find any people assembled at Liffey-street chapel on that day?

A. Yes, I saw a considerable number there?

Q. Did you remain amongst them?

A. No, I went up to the gallery.

Q. Did you observe what the assembly proceeded to do?

A. There was a person of the name of *Thomas Kirwan* there.

Q. Do you see any body in court that was there on that day?

A. Yes, Dr. *Sheridan*, he was chairman.

2. Were you there when he took the chair?

A. No: he was in the chair before I arrived.

2. Did you hear any person address the chair, or the meeting?

A. I did.

2. Who?

A. I heard Mr. *Kirwan* address the chair, and the meeting.

2. Do you recollect what was the subject of his discourse?

A. Yes: he moved that a petition be presented to his Royal Highness the Prince Regent, and both houses of parliament praying for a removal of the remaining penal laws existing against the Roman Catholics of Ireland.

Q. Was that question put by any person?

1. By Doctor *Sheridan*, and was carried unanimously.

2. Did he propose any thing more, or did any person else make a motion?

1. He did.

2. What more did he propose: what was the next thing Mr. *Kirwan* moved?

1. That five persons be elected to present or prepare a petition, and that said five persons were to represent the Catholics of the parish in a general committee of the Catholics.

2. Was that resolution seconded?

A. It was.

Q. Was it put by the chairman?

A. It was.

Q. By Doctor *Sheridan*?

A. Yes.

Q. Was it passed?

A. Yes, unanimously.

Q. What was the next proceeding you observed?

A. Mr. *Kirwan* then moved that seven persons be elected to nominate the said committee of five, but none of the said seven to be elected were to be of the said committee of five, or words to that effect.

Q. Did that resolution pass?

A. Yes, unanimously.

Q. Tell the manner in which the seven were nominated?

A. They just began by Doctor *Sheridan* naming

one, and the person he so named, named a second, and the second named a third, and so on.

Q. What did those persons do after they were appointed?

A. They retired for a short time: I do not suppose they left the chapel.

Q. For how long did they retire?

A. From five to ten minutes.

Q. When they returned what did they do?

A. Some person then proceeded to mention the names of the five persons they had appointed.

Q. Do you recollect the names of those persons they had appointed to this high situation and dignity?

A. Yes, Mr. *Sheridan* was the first named.

Q. Doctor *Sheridan* was the first of the five persons named?

A. Yes.

Q. Do you recollect any other person being named?

A. Yes, Mr. *Kirwan*, Mr. *Taaffe*, Wm. *Sweetman* jun. and Mr. *Shiel*.

Q. When those persons were named did any thing particular take place?

A. Yes; when Mr. *Sheridan* was named, it was then moved he should leave the chair and that Doctor *Burke* should take it which was accordingly done: and on Doctor *Burke* taking the chair, Doctor *Sheridan's* name was put by Doctor *Burke* to the whole meeting as a person to be one of the said five; which was unanimously carried.

Q. Did you hear him say any thing after the election was carried?

A. I did not; but Mr. *Kirwan* gave his thanks for the honour conferred on him, and said he would exercise the trust reposed in him to the best of his power.

Q. Did Doctor *Sheridan* return to the chair?

A. Yes; after he had been appointed as one of the said five persons he resumed the chair.

Q. Did you see him leave the chair afterwards?

A. Yes.

Q. What was the object of his leaving the chair?

A. It was moved by the meeting that he should leave the chair.

Q. Who went into it?

A. Henry Edmond *Taaffe*.

Q. What was the proceeding then?

A. After he was in the chair, the thanks of the meeting were returned to Doctor *Sheridan* for his very proper conduct in the chair by Mr. *Taaffe*.

Cross-examined by Mr. Burne.

Q. You and *Sheppard* went together to the meeting?
A. Yes.
Q. Did you come away together?
A. Yes.
Q. Then you were there as long as *Sheppard?*
A. Yes.
Q. By whose direction did you go to that meeting?
A. It was by order of the Magistrates of the Head Police Office.
Q. What Magistrate?
A. Either Counsellor *Hare* or Major *Sirr*.
Q. You cannot tell which of those Magistrates gave those orders?
A. I cannot.
Q. What situation do you hold in that Office?
A. A Clerk.
Q. What is *Sheppard's* situation?
A. It is a Peace Officer.
Q. Which situation is the highest order, the Peace Officer or the Clerk?
A. I rather believe mine.
Q. Did you get any particular order as to what you were to do when you went to this meeting?
A. Yes Sir, to take down notes of what passed.
Q. Was taking down the notes of what passed there your business or *Shepperd's?*
A. Both.
Q. You took notes yourself?
A. I did.
Q. Give me leave to ask you what has become of them, can you tell me?
A. I do not know: I cannot say, but I may have them or may not.
Q. When did you last see them?
A. About ten days ago.
Q. Were you in Court the whole time of *Shepperd's* examination.
A. I was.

Q. Did you see your notes about ten days ago?
A. I did.
Q. On your oath where are they now?
A. I cannot tell that.
Q. On your oath you cannot tell where they are now?
A. No.
Q. Were not your orders to bring the report of what took place at that meeting to the Magistrate?
A. Yes.
Q. And did you not give that report to the Magistrate?
A. No, I did not give any written report.
Q. Were you not asked for any written report?
A. I was asked if I had a report: and I told them I had.
Q. And you were not asked for it?
A. Not at that time.
Q. When were you asked for it?
A. I cannot form a belief.
Q. By whom were you asked for it?
A. By one of the Magistrates.
Q. By which of the Magistrates?
A. Counsellor *Hare* I believe.
Q. Where was the written report?
A. In my desk.
Q. Is it in your desk now?
A. I cannot tell.
Q. Did you ever take it out?
A. Yes.
Q. For what purpose?
A. To look at it.
Q. For what purpose?
A. I cannot immediately say.
Q. Who desired you to take it out?
A. No body.
Q. How long since you took it out of your desk?
A. I do not know.
Q. On your oath was it two months ago?
A. No.
Q. Was it one month ago?
A. No.
Q. On your oath was it ten days ago?
A. Yes.

2. *(Court)* What did you take it out of your desk for?

A. To look at it?

2. (Mr. *Byrne)* When you took it out to look at it did you know you were to be examined here this day?

A. I knew that previously.

2. Did you take it out to refresh your memory?

A. It might be.

2. Was it?

A. It was.

2. Did you look for it since?

A. No.

2. You never searched for it since?

A. Not since I saw it last.

2. Then you have not looked at it, since you saw it last?

A. No.

2. When did Counsellor *Hare* ask for it?

A. I believe in a short time after I had been at the Chapel.

2. You had the paper in your desk in the same house where Counsellor *Hare* was?

A. Yes; he asked me had I it, and I told him I had.

Q. You cannot form a belief that you shewed it to him?

A. I cannot say I shewed it to him.

Q. Did you shew any paper?

A. Yes; the copy of the informations that were in the office.

Q. Did you ever make any copy of your notes?

A. No.

Q. Did you ever make an extract from them?

A. Only the informations.

Q. You were informed about ten days ago that you were to be examined?

A. I was not: I heard it.

Q. And you cannot say on what occasion you looked at the paper?

A. No, for they are among other papers in the desk.

Q. Do you believe they are there?

A. They must be there or else where.

Q. Did you go to look for them at any time?

A. Not at that time.

Q. When?

A. Before the informations were drawn; they were in the desk with other papers; and when I saw them I looked at them.

Q. You have mentioned two resolutions that passed at the meeting?

A. Yes.

Q. First that a petition should be presented?

A. Yes.

Q. Mention the second?

A. The second was that five persons should be appointed to prepare or present a petition, and the said five persons were to represent the Catholics of the parish in the general committee.

Q. Was that the whole of the second resolution as you believe?

A. I believe it was.

Q. You have said they were to represent the Catholics in the general committee, on your oath are you positive as to the word *represent?*

A. Or something like it.

Q. Will you swear that word was in the resolution?

A. I cannot swear it.

Q. You cannot swear positively that the word *represent* was in the resolution?

A. I cannot, but there was something like it.

Q. Were the resolutions read from a paper in your hearing?

A. They were read but I do not know if they were in or writing.

Q. Were they on paper?

A. They were on paper.

Q. Did you make any informations against Doctor *Breene?*

A. Yes: I mentioned his name as one of the seven persons I learned to be there.

Q. Did you take your notes at the same time with *Shepperd?*

A. Some of them.

Q. You were both ordered to make a report of the proceedings?

A. Yes.

Q. Whose duty was it to make the report: was it not the duty of the clerk?

A. Yes.

Q. Did you make any written report to the Magistrate?

A. I did not.

Q. Who ought to have done the business? Who ought the Magistrate to have called on, the clerk or the constable?

A. They can call on either.

Q. (Court) Did you see Doctor *Breene?*

A. I did not—I saw a person that I heard and believed was Doctor *Breene.*

Q. You do not know him?

A. Yes—I saw him before.

Q. Did you see him that day in the Chapel?

Q. No my lord.

Francis Huddleston examined by *Serjeant Ball.*

Q. Your name is Francis *Huddleston?*

A. Yes Sir.

Q. Did you attend any meeting of Roman Catholics during last summer?

A. I did that which was held the 9th of July last, in Fishamble-street.

Q. Was there a full meeting?

A. There was.

Q. Did any person preside as chairman at the meeting, I do not desire you to mention names?

Mr. *O'Connell*—Let him mention who presided.

Serjeant *Ball*—Since the gentleman desires it; who took the chair.]

A. Lord *Fingall.*

Q. What was the first business done after taking the chair by my Lord *Fingall?*

Mr. *Goold.*—At this stage of the business I object to the witness giving any evidence of what passed at an aggregate meeting at which the Traverser was not present. The Indictment against the Traverser is, that he on the 31st day of July, twenty two days after the meeting of which the witness is going to give evidence, was present at a meeting of Roman Catholics where certain matters took place.—Nothing as far as my recollection goes, has as yet appeared and I will venture to say no matter appears upon the face of

the learned Judges' notes, which at present can in any way connect the meeting of the Catholics on the 31st of July, with the meeting alleged to have taken place on the ninth of the same month. That being the case. I require to know whether the counsel are at liberty, at least—at present in going into evidence of transactions which occurred so considerable a time before those in which the Traverser now stands charged with being concerned.

Serjeant Ball. The object of the examination is to shew that the meeting of the 31st of July, was a general meeting that took place in Liffey-street in consequence of resolutions entered into on the 9th of July, in Fishamble-street. It is necessary to produce a witness to shew that a general meeting of the Catholics had been resolved upon, and that the meeting of the 31st of July, was for the purpose of carrying into effect the intentions of the meeting, of the 9th of July, by electing delegates to represent the Catholics of the several parishes in Dublin, in a general meeting, to be afterwards held.

Solicitor General. There are two counts in the indictment; the first for taking part in the election that took place at Liffey-street pursuant to the resolutions entered into on the 9th of July. The second for taking part in the elections of five persons, to represent the parishes of Dublin in a general committee, without stating that meeting to have been held in consequence of the resolutions of the 9th of July, I do not mean to say that it is evidence against the Traverser, what happened on the 9th of July, but it certainly is competent to shew that a general committee of Catholics had been resolved upon. For instance it is one object to shew, that there was a geneneral meeting on the ninth of July, and that part of the resolutions entered into on that occasion, was that five persons were to be elected from each parish to represent the Catholics of those parishes in a general committee to be afterwards held.

Court. There must be evidence for the Jury, to say whether or not there was a connection between those assemblies or not. They must believe they had a reference to each other; or the assembly of which we are at present speaking cannot affect the Traverser.

Q. (*Serjeant Ball.*) Were any resolutions entered into, in that meeting; relative to the appointment of a general committee of Catholics?

A. Yes.

Q. For what purpose was it to be?

A. I will relate the transactions of the meeting; after the chair was taken, then business commenced by Mr. *Hay* the Secretary to the Roman Catholics, reading resolutions that had happened at a meeting of the Catholics which had taken place a few days before.—Am I to mention names?

Q. What next happened?

A. The resolutions were to this effect.

Q. (Mr. *Goold,*) Those resolutions were read by Mr. *Hay?*

A. They were.

Mr. *Goold*, Then these resolutions which took place at a former meeting, cannot now be given as parol evidence to affect the Traverser.

Mr. *Burrowes.* There is no proof made by the prosecutors, that they attempted to procure the production of those resolutions, which had been so reduced to writing at a former meeting. What is there in the present case to dispense with the ordinary and established rules of law, that the best evidence the nature of the case can admit of, shall be given: that is, that the contents or substance of a written instrument, shall not be given in evidence, without first shewing to the Court that it is lost or mislaid, and out of the power of the persons seeking to take advantage of its contents, to produce it.

Mr. *Goold.* In the case of high treason in England, on the trial of Hardy, Mr. Erskine for the prisoner laid it down as a principle that the resolutions of the London Corresponding Society should be produced, and the then Attorney General did not contend the point.

Serjeant Ball. This is not an indictment for any thing done at the meeting where those resolutions were entered into.

Mr. *Goold.* Why was not Mr. Hay summoned to produce those resolutions, why is not some evidence gone into, to shew that the crown endeavoured to procure their production.

Serjeant Ball. I asked the witness what he heard proposed at the meeting. The answer given by the counsel for the Traverser, is, that because certain resolutions which on a former occasion had been entered into, are not now produced that the proceedings of the subsequent meeting shall not be given in evidence.

Court. It is wanted to be established that certain resolutions were entered into of great importance at a previous meeting, and it appears those resolutions were reduced to writing. If those resolutions are considered as material to the issue they ought to be procured or their non-production ought to be accounted for.

Q. (Serjeant Ball.) You have stated that a resolution was read at this meeting, which only accounts for the cause of their meeting, was any motion made with respect to the original meeting?

Q. (Mr. *Goold.)* Were the resolutions of which you are going to give evidence in writing?

A. They were read from a written paper.

Q. (Serjeant Ball.) What was the substance of the first resolution?

Q. (Mr. *Goold.)* Was the proposition of the resolutions in writing?

A. They were read from a written paper. I cannot say they were afterwards written, but they were in writing at the time they were proposed to the society.

Q. Did not Lord Fingall sign the resolutions?

A. I do not know whether he did: I believe he did.

(Mr. *Solicitor General.)* The question now is whether those resolutions made at this meeting can be given in evidence by parole, it appearing they were moved from a written paper, and that the witness believes they were signed by Lord *Fingall.* The transactions that took place at that meeting are assuredly evidence. Suppose it had been the house of parliament, or a court of justice or other assembly. Would not the transactions of such an assembly be legal evidence because the person chooses to read from a paper that to which he intends to draw the attention of the meeting? Some persons study their speeches, others write them. Suppose a man was to read a treasonable speech in a public assembly: it is admitted that the

acts of that assembly are evidence? will it be argued that in order to make a man accountable for his treasonable expressions which he chooses to read from a paper, that you must call upon that man to produce that document, and that parol evidence of its contents would not be admissable. This is not like the question on the production or non-production, of a written instrument which must be produced or accounted for, before a party can take advantage of its contents. Suppose Mr. *Hay* had been applied to, for the purpose of producing the resolutions which were entered into on that occasion: might he not say he was not bound to criminate himself by doing so? This is not evidence of resolutions, it is the evidence of the conversation which took place, and shall the reducing of that to writing render evidence of the transaction inadmissable? Suppose such written document was to be produced, would the production of it preclude the crown from giving parol testimony of every matter which took place at an assembly, all of whose acts are evidence against themselves? It is not a document necessary to the point in issue, it does not involve the question of superior and inferior evidence.

Court. There can be no objection to the evidence. The instrument called for does not in its nature appear to be such a one as ought of necessity to be produced, in order to entitle the party to give evidence of an inferior nature. The nature of the objection is, that there is a document in existance of certain resolutions, and that therefore parole evidence cannot be given of what passed. But the evidence offered is, what passed at that meeting, what was said by the one and the other, and what was done at the meeting. The evidence cannot be rejected.

Q. Serjeant Ball. You have stated that there were resolutions proposed?

A. There were. Is it necessary to mention the name of the gentlemen by whom they were proposed?

Q. No, State to the Court and the Jury what resolutions were proposed.

A. The first resolution was:

"Resolved, that being impressed with an unalterable conviction of its being the undoubted Right of every Man to Worship his Creator according to the genuine dictates of his own Conscience, we deem it our duty

publicly and solemnly to declare our decided opinion and principle, that no Government can, with justice, inflict any pains, penalty, or privation upon any man for professing that form of Christian Faith which he in his conscience believes."

Q. What was the second resolution?

A. "That we shall therefore persevere in Petitioning the Legislature for a total and unqualified repeal of the Penal Laws, which aggrieve and degrade the Catholics of Ireland."

Q. What was the third resolution?

A. "Resolved, That in exercising this undoubted right of Petitioning, we shall continue to adhere to the ancient principles of the Constitution, and to conform also to the peculiar restrictions, which by modern Statutes, are imposed on the People of Ireland."

Q. Was there any other resolution?

A. Yes.

Q. What was the fourth?

A. "That a Committee be appointed to inquire into the state of the Penal Laws affecting the Roman Catholics, and give a return of the same within one month."

Q. Were those resolutions carried?

A. Yes, they were carried unanimously. Another gentleman rose and said that a resolution which he had to propose, had with a view to conveniency, been agreed to by gentlemen in another room.

Q. What was the substance of that resolution?

A. "That said Committee do consist of the Catholic Peers and their Eldest Sons, the Catholic Baronets, the Prelates of the Catholic Church in Ireland, and also ten persons to be appointed by the Catholics in each County in Ireland, the Survivors of the Delegates of 1793, to constitute an integral part of that number, and also of five Persons to be appointed by the Catholic Inhabitants of each Parish in Dublin."

Q. Was that resolution put to the assembly?

A. It was; and carried unanimously.

Q. Do you recollect any thing more that happened at the meeting?

A. There were other resolutions of money to individuals, and thanks to certain members of parliament.

Cross-examined by Mr. Goold.

Q. Captain *Huddleston*, what countryman are you?

A. An Englishman.

Q. What religion are you?

A. I consider myself to be a Protestant. I was educated a Roman Catholic. I have for several years past, considered on the subject, and the effect of that consideration has been, on my mind, that I have rejected the doctrines of the Roman Catholic faith, and have adopted the tenets of the Protestant church.

Q. I presume, then, you have renounced the Catholic religion, with all the solemnity such an alteration in your religious opinions required?

A. I never read my recantation; but when, in the presence of this court, I make a solemn declaration of being a Protestant, I think I cannot make a more solemn renunciation of my being a Catholic.

Q. From the character you appear in this day you do the Protestant religion great honour; and being on the subject of religion, and of hearing "truths divine" from such a tongue, I presume I am to take every thing you have said this day as Gospel.—You have the honour of being descended from one of the most ancient Roman Catholic families in England?

A. I have.

Q. I believe your family have been Roman Catholics for some hundreds of years?

A. They have.

Q. You have done your family great honour by reading your recantation this day?

A. I have acted from conviction.

Q. You are a man of learning?

A. Not much.

Q. You have examined, no doubt, with a great deal of erudition, into the subject of religion?

A. I have read a great deal on the subject; and the result of my reading was to become a Protestant?

Q. It was the result of your reading that induced you to become a Protestant. I am sure you acted from no other motive than the divine sense of religion. Now, Sir, have you ever entertained rather loose opinions on the subject?

A. Not since I came to the age of reason. I certainly did not since I was fourteen or fifteen years old. I cannot answer for the follies of youth.

Q. Then, as you are a perfectly pure and religious man, will you swear you never declared a tendency to be a Deist?

A. Never.

Q. Then you would be shocked if I was to ask you, if you ever declared yourself to be an Atheist?

A. I never did.

Q. Do you swear that positively?

A. Most solemnly.

Q. Then, if I am to take the account of Captain *Huddleston* from himself, he thinks himself, at this moment, to be a perfectly religious man. Do you call yourself a moral man?

A. I have the frailties of other men.

Q. At the time this extraordinary meeting took place were you a Protestant?

A. I was.

Q. What was your object in attending that meeting?

A. I attended in the character of a reporter for the news papers: more shame, Mr. *Goold*, for the family you have so highly extolled.

Q. You have attended a great number of meetings?

A. Yes, I have.

Q. Did you ever know a single instance in which there was a person in the chair, that the resolutions were not reduced to writing before they passed?

A. As far as my experience goes, I always found they were read by the chairman or the secretary.

Q. By virtue of your oath, do you not believe that those resolutions were in writing?

A. I think they were reduced to writing by the proposer, but they might have been transcribed into a thousand other papers.

Q. Do not you believe they were in writing at the time they were proposed?

A. I have no doubt of that.

Q. Do not you believe they were continued in writing by the secretary, and afterwards signed by the chairman?

A. I believe so: my belief is grounded on the usual practice of public meetings on such cases.

Q. Do not you believe the chairman did sign them?

A. I do believe he did.

Q. How many resolutions were passed?

A. I cannot exactly answer that question.

Q. Then you do not recollect the whole of what passed on that occasion?

A. If the resolutions are to be taken by the members of which they are formed, more resolutions may have passed than what I have mentioned.

Q. You have mentioned the fourth resolution to be, that a committee be appointed to enquire in the penal laws, and to give a report within one month.

A. The conviction on my mind is that it was proposed.

Q. Was it passed?

A. I reported it as being passed. With respect to the fourth resolution my mind is not as accurate as it is to the other resolutions.

Q. State the second resolution?

(*The witness repeated it.*)

Q. Are you positive that resolution was passed?

A. Yes.

Q. And the second?

A. Yes.

Q. And the third?

A. Yes.

Q. Will you swear that the fourth resolution you have stated, or any thing like it passed on that occasion?

A. I could not take it down if it had not passed. I have not seen the *Evening Post* in which the resolutions were officially published for these four months: but my apprehension is, that the resolutions were altered and amplified in that paper.

Q. Will you swear that any thing like the fourth resolution you have repeated, was stated from the chair on that day?

A. To the best of my recollection it was: I have repeated before, my doubts of my accuracy in repeating that resolution. To the best of my recollection the only thing on which I have a doubt is whether the report was to be within a month after that meeting, or after the meeting of parliament.

Q. What paper did you report for?

A. The *Hibernian Journal.*

Q. A paper not very friendly to the cause?

A. I have reported for papers that are friendly.

Q. Who moved that resolution?

A. Do you wish me to name him?

Q. Yes.

A. Mr. *O'Gorman.*

Q. You mean *Counsellor O'Gorman?*

A. Yes.

Q. Who moved the first resolution?

A. Mr. *O'Gorman* moved the first four resolutions.

Q. You say you saw an official report in the *Dublin Evening Post?*

A. I understood so.

Q. Did it appear that Lord *Fingal's* name was to that report?

A. The only thing that struck me was that the resolutions were amplified: to the best of my belief his name was to it.

Q. Was not that account in the *Hibernian Journal* also?

A. Not to my knowledge.

Q. How long ago is it since you saw your report of those resolutions?

A. I have seen them frequently.

Q. When was the last time you saw them?

A. I saw them this day.

Q. Did you see them in writing this day?

A. No: I saw them as published.

Q. How long since you saw them in your own hand writing?

A. I suppose not since about the time that I published them, about four months ago.

Q. Have you since that meeting taken pains to refresh your memory?

A. I have.

Q. Did you refresh your memory this day?

A. I did not think there was any occasion.

Q. Did you refresh your memory?

A. Yes.

Q. This day?

A. Yes.

Q. How did you refresh your memory?

A. By reading certain papers in my possession.

Q. What did you read?

A. I read a private letter that did not bear on those resolutions at all; but I think it was much on the question of this day.

Q. Who wrote that letter?

A. It is my own: but it does not bear on those resolutions but collaterally on the subject. I have his day read the newspapers in which the business was reported.

Q. And you refreshed your memory by this day reading a private letter that related to a former transaction?

A. Here are the newspapers of the Eleventh and Twelfth of July: (the witness produced the *Hibernian Journal* of those dates.) There are some errors of the press in them.

Q. Was your memory refreshed?

A. I cannot say my memory was refreshed: I cannot say how I could refresh my memory; the reading of the papers might prevent a lapse in my memory, but I cannot see how it could refresh my memory.

Q. How long since you lost your notes, I do not mean your bank notes?

A. They have been destroyed these three months. I have searched for them with care, and could not find them, and therefore I conclude they are lost or destroyed.

Q. (Court.) They were destroyed without any act of your own.

A. Yes, my Lord.

Q. (Mr. *Goold.)* When I saw you reading papers over the way, what papers were they?

A. A private letter, and the *Hibernian Journal* of the 11th, and 12th, of July last.

Q. Shew me that written paper you have, and which you say has nothing to do with this question but collaterally connected with the subject.

A. Sure you will not wish to see the private letter! In fact it has nothing to do with it.

Q. Has that written paper any thing to do with it?

A. I told you I think it has a distant reference.

Q. To whom is that letter written?

A. Am I bound to answer that question? I have no occasion to disguise any thing; I wish every transaction to be as open as the day.

Q. Then Sir, since you have no objection that every thing should be as open as the day, pray tell me what direction is on that letter?

A. The direction is torn off.

Q. Then Sir, be good enough to inform the court and the jury to whom that letter was written?

A. Am I bound to answer the question?

Court. There can be no objection to your answering the question.

A. It is a letter to Sir *Charles Saxton.*

Q. How long ago since it was written?

A. The date is not on it; but I should think some time in March last. I will beg leave to explain the transaction.

Q. By what process can you make it appear, that a letter, written by you to Sir *Charles Saxton,* in the month of March last, should bear any reference to a transaction happening in the month of July following. I tell you fairly, Captain *Huddleston,* my object is to discredit you, and I am instructed there are witnesses to be examined for that purpose. Tell me now, how that letter can bear on the transaction of July last?

A. You have stated that you wish to discredit me: it is therefore very right and just that I should support myself; I therefore wish fully to explain how I was drawn into this business; I attended those meetings for a small emolument.

Q. I do not want you to read your letter. I want only an answer to my question?

A. I wish to explain the transaction.

Q. (*Court.*) What part of your evidence do you wish to explain: you say the letter refreshed your memory?

A. It did not refresh my memory, but it prevented a lapse. I wish to explain. The subject of this letter bears on the question of delegation.

Q. (Mr. *Goold.*) I want no other explanation than an answer to my question.

Court. The witness wants to explain how this letter bears collaterally on the present subject; if he can do so, he has a right to do so. But as to reading the letter in evidence, that cannot be done.

Q. (Mr. *Goold.*) When you wrote that letter, give me leave to ask you, was it your own free and conscientious act to write it?

A. It was my own free will and motion; but I will explain it.

Q. Was the idea of writing that letter the suggestion of your own heart: or was it in consequence of the suggestion of any person to you?

A. It was. I received a suggestion certainly, but the writing was of my free will and motion.

Q. Then was it in consequence of suggestions?

A. They were both one and the other. I will explain the transaction. The proprietor of the *Hibernian Journal* came to me, and asked me if I had any objection to wait on Sir *Charles Saxton*; I told him—

A. I do not want to know what passed between you and the proprietor of the *Hibernian Journal*.

(*Court.*) He is going to tell you whether he wrote a particular letter at the suggestion of any person, or whether of his own accord.

A. (*Witness.*) I waited on Sir *Charles*, and had a conversation relative to having attended the Catholic meetings. I told him, if I came forward on the occasion as a witness, I would be exposed to a great deal of reproach and obloquy: but that if I was obliged to come forward I would tell what I knew on the subject without fear.

Q. Are you a willing witness?

A. I cannot say I am not.

Q. Did you swear you were not?

A. I did not.—I am sorry such a business should come ward, but I did not swear I was unwilling.

Q. Have you ever received any favours from government?

A. I have received numerous favours from government. I was in the army, and I held the situation of a barrack-master?

Q. Have you received any favours lately?

A. I have not.

Q. Have you any prospect of receiving any favour?

A. I swear I have no certain prospect. I did, about three years ago apply for a situation, which I was promised, and which I never received.

Q. Have you no prospect?

A. No prospect.

Q. How long have you been in this country?

A. Ten years.

Q. Have you any knowledge of the Earl of *Fingal*?

A. I have had the honour to be in his company.

Q. He is a man of the highest rank in Ireland?

A. He is.

Q. Do you believe there is any man in his Majesty's dominions less willing to violate the law of the land?

A. I do not believe his lordship would violate any law?
Q. Do you know Lord *Southwell?*
A. I have never been in his company.
Q. There were five resolutions?
A. Yes.
Mr. *O'Connell.*—Ask him, Mr. *Goold,* by whom the fifth resolution was moved?
Q. Do you know by whom that resolution was moved?
A. Do you wish me to name the gentleman?
Mr. *O'Connell.* Yes; name him; we wish you to do so.
A. By Mr. *John Byrne.*
Q. Mr. *Goold.* Young Mr. *Byrne,* of *Mullinahack?*
A. Yes.
Mr. *Goold.* My Lords, we will not detain the court any longer with this witness.

(*Case closed on behalf of the Crown.*)

Mr. *Attorney General* My lord, we will not produce any other evidence, and close on behalf of the crown. It is now past six o'clock, and there is no objection, if it meets the approbation of the court, to adjourn until to-morrow morning.
The court adjourned until ten o'clock the following morning. The jury, by consent, were permitted to go at large, until the sitting of the court the next day.

Friday, 22d November, 1811.

This day the Court sat pursuant to adjournment at half past 10 o'Clock.
Court. It is necessary to explain a matter in the informations sworn by the witnesses *Shepherd* and *M'Donough*—therefore let *James M'Donough* be called.
Mr. *Burne.* I request your Lordships to allow the first witness to be sent out of Court while *M'Donough* is re-examined.
Chief Justice. Do so.

M'Donough examined by the Court.

Chief Justice—Q. Did you not give in evidence yesterday, that you saw Mr. *Breen* at the meeting in Liffey-street Chapel?

A. Not in the Chapel my Lord.

Q. You did not see him in the Chapel?

A. No my Lord.

Q. Did you say any thing else of having seen him on that day?

A. Not yesterday.

Q. Did you ever represent, or mean to do so, in your informations, that Doctor *Breen* was positively there?

A. No my Lord. What I meant to say was this, on my return out of the Chapel amongst the persons coming out, I just turned my head, and saw a Gentleman whom I believed to be Doctor *Breen*; I said to *Shepherd* I believe that is the Gentleman, Dr. *Breene*, whose name I heard spoken of, or called in the Chapel.

Q. Did you represent, or mean to do so, to the Jury, or in your informations, that the seven persons who were to retire and return, and nominate the five, were at that time present in the Chapel and retired?

A. I believed it, but did not swear positively.

Q. Did you mean to convey in your informations the idea, that these seven persons were actually present at the time?

A. I did mean to do so.

Q. Did you mean to swear positively to that?

A. I could not positively swear that Doctor *Breen* was there, I only believe it.

Q. Did you mean to represent that Mr. *Kirwan* proposed that seven of those that were present at this meeting should be nominated?

A. Yes.

Q. Did you mean by that, that the seven persons nominated were present?

A. Yes my Lord, though I did not mean to say I saw them.

Q. When you said that Mr. *Kirwan* proposed that seven should be nominated, in order to appoint five, did you mean to convey by those words, that those seven persons were at the time present in the Chapel?

A. Yes my Lord.

Q. You did not see Mr. *Breen?*

A. I did not.

Q. How did you know that the person called in the Chapel, was Dr. *Breen* whom you saw at the door?

A. To the best of my belief it was Dr. *Breen.*

Q. Your information does not go to belief—Did you mean in your information that you knew him to be Dr. *Breen?*

A. It was afterwards I knew him.

Q. You could not say Dr. *Breen* was Dr. *Breen* without seeing him.

A. I heard it was Dr. *Breen* who was nominated.

Q. Did you swear in your information that, at the time, you knew it was Dr. *Breen?*

A. I believed it was him at the time.

Q. How could you say it was the same person who was called in the Chapel?

A. I believed it was the same, because I saw him coming out.

Court. Go down Sir——Mr. Burrowes you may go on.

MR. BURROWES.

My Lords, and Gentlemen of the Jury—It is no common place exaggeration to assert, that the question upon which you are to decide is serious, and interesting in the extreme, and claims your utmost attention. His Majesty's Attorney General more than insinuates that the peace of the country and the stability of its government depends upon your verdict. In this I agree with the Attorney General, and I add to the catalogue of things at hazard (what does not much appear to excite his sensibility) the invaluable right of petitioning. But I totally differ from his Majesty's Attorney General as to the mode in which your verdict may affect these great concerns, for it is the firm conviction of my mind, that if you shall in the person of Mr. *Sheridan*, attaint the Catholic Body of Ireland of treasonable practices, all these great objects will be more than hazarded. I well know with what inferior weight of talents and influence, I make this contrasted assertion; but I feel, I confidently feel, that this inferiority, great and formidable as it is, is more than counterbalanced by the weight of the cause I advocate. Before I enter upon that cause, I must, I will freely remark upon what occurred under every eye, and therefore under your own, while you were impannelling. I confess, Gentlemen, I was astonished to find that no Roman Catholic was suffered to enter that box, when it is well known that they equal if not exceed Protestant persons upon other occasions, and when the question relates to privileges of which they claim a participation, and you possess a monopoly. I was asto-

nished to see twenty-two Protestant persons of the highest respectability set aside by the arbitrary veto of the Crown, without any alleged insufficiency, upon the *sole* demerit of suspected liberality. I was astonished to find a juror pressed into the box who did not deny that he was a sworn Orangeman, and another who was about to admit, until he was silenced, that he had prejudged the cause. Those occurrences at the first aspect of them filled me with unqualified despair. I do not say, that the Crown Lawyers have had any concern in this revolting process—but I will say, that they ought to have interfered in counteracting a selection, which has insulted some of the most loyal men in this City, and must disparage any verdict which may be thus procured. But, Gentlemen upon a nearer view of the subject, I relinquish the despair by which I was actuated—I rest my hopes upon your known integrity; your deep interest in the welfare of the country, and the very disgust which yourselves must feel at the manner and motive of your array.—You did not press forward into that Jury Box—you did not seek the exclusion—the total exclusion of any Roman Catholic—you no doubt would anxiously desire an intermixture of some of those enlightened Roman Catholics, whom the Attorney General declared, he was certain he could convince, but whom he has not ventured to address in that Box. The painful responsibility cast upon you, is not of your own wishing, and I persuade myself, you will upon due reflection feel more indisposed to those, who court and inflame your prejudices, and would involve you in an act of deep responsibility, without that fair intermixture of opposite feelings and interest, which by inviting discussion, and balancing affections, would promise a moderate and respected decision, than towards me, who openly attach their prejudices, and strive to arm your conscience against them. You know, as well as I do, that prejudice is a deadly enemy to fair investigation—that it has neither eyes or ears for justice—that it hears and sees every thing on one side, that to refute it, is to exasperate it, and that when it predominates, accusation is received as evidence, and calumny produces conviction.

One claim I urge to your justice, which you cannot, you will not refuse—Listen to the evidence and the arguments with patient attention, and read the indictment and the act of Parliament upon which it is founded

with the minutest care—they will not, I presume, be withheld from you. Upon the law of the case, and the true construction of that act, I shall now proceed to comment:—

The act my Lords, is very short, and nothing is more easy than to extract a just and perfect definition of the crime it *declares*, and enacts to be a high misdemeanor; that definition is "*representing* the people or any portion of the people, under pretence of petitioning for, or otherwise procuring an alteration of matters established by law in Church or State." All persons who are in any way, or under any name deputed to, or who assume *such a character*, are guilty under this act; and persons in any way electing or appointing *such assemblies*, namely, assemblies assuming, or exercising a right to *represent* the people, are also guilty. The great question therefore will arise upon the true meaning of the term *represent* in this statute—now I conceive that *to represent* any man, or body of men, both in common and legal parlance, means to fill his or their place, and to possess his or their power, to the exclusion of the body represented during the representation. The representative acts in his own name, and is invested with all the powers of the body represented; he differs from an Attorney, or a man deputed to do a particular act in a defined way—the latter is a mere instrument acting under orders, and in the name of his principal. Such is the meaning unquestionably of representatives of the people in Parliament, and from this meaning spring their principal attributes and qualities; they possess the public rights of the people, and exercise them in their own name, without any obligation to obey or even to consult their constituents. In the same sense is representative used as contradistinguished from attorney in all legal relations—the personal representative, the real representative are persons having and exercising rights of their own in their own name. If this meaning be adopted, it is not difficult to understand why to represent the people, or any portion of them should be a crime at common law and declared to be such. It is evident, that to give, or to assume such a right would be to encroach upon the exclusive privileges of the House of Commons; and no man can doubt, but that to assume the character or exercise the functions of any department in the state, legislative, executive, or judi-

cial, is, and always was an high misdemeanor—but it never yet was conceived, that to depute a man, or a number of men, to perform a defined, preconceived, legal service, for, and in the name of the persons deputing, was an encroachment upon the rights of Parliament, and more particularly when that very service was to propose a petition to that very Parliament. That the Legislature, uses the word *represent*, in defining the crime as I explain it, appears conclusively from this, that knowing that the House of Commons must fall under the definition, they expressly except it—" Save and except the Knights, Citizens and Burgesses elected to serve in the Parliament thereof;" so that from the legal and constitutional meaning of the word, represent; from the excepting the House of Commons from the enactment, and from the Legislative avowal, that the evil to be guarded against, was a pre-existing crime; it, most clearly follows that the appointment of deputies bona fide, to prepare a petition to Parliament, and for no other purpose cannot be within the act. I entreat those who assert the contrary, to inform the public, whether every act of deputation for the purpose of communicating with the Parliament, falls within the act, or where they draw the line? The Attorney General has not drawn any line—will he say that to depute a few to prepare a petition—materials for a petition is criminal:—will such deputation become criminal, if they consume one, two, three, or how many days in executing their commission? Will it be criminal in the mercantile bodies of Dublin, Cork, Waterford and Belfast, should each appoint persons to confer upon the general business of trade, and to prepare a petition to Parliament upon the subject? The Attorney General has not furnished any boundary or criterion, and if he succeeds in his construction of the law, no man can say, where the spoliation of a great popular right, I am not ashamed to use the word, much as it has been abused, will stop.

But we are told that the Magistrates are directed and empowered by the law, to disperse the assembly declared and enacted to be illegal; and we are triumphantly asked, how can they even act if false pretence or encroachment upon parliamentary privileges be the criterion of guilt? How can they be supposed to know the false pretence or criminal pursuit? I decline not this test of the meaning of the statute, and I answer that it

is no great evil in the mind, at least of any man who is not a law officer, that great difficulty should obstruct the right of dispersing men who are acting peaceably, and who furnish no pretext for such dispersion, but suspected guilt, and imaginary evil result. If they commit any seditious act, or menace the public peace by riotous or disorderly conduct, the Magistrates may disperse them—If they are associated as usurpers in the slightest degree of parliamentary right, he may also disperse them.—In the latter case he must and he ought to act at his peril; and I hope I never shall live to see the day, when the tranquillity of the country shall be secured by more extended powers. But has the Attorney General illuminated the intellect of the magistracy upon this subject? Has he defined for their practical guide, what species of delegates they may disperse, and when they should abstain? Are they warranted to attack the Quakers' meeting? Are they warranted to disperse the Presbyterian synod in Ulster? Are they warranted to violate the sanctuary of every deputed chamber of commerce in Ireland? Can there be no conference upon subjects of common interest between persons widely separated, through the medium of agents or committee men (I dread not the phrase) without a previous licence from Government? I know not how this may pass in Ireland—but how will this exposition of the common law be relished in England—for it is clearly and is avowed to be a common law question, applicable there as well as here—the Attorney General has not explained this, which I wish he may do—I shall not consider it an interruption. What explanation the Solicitor General may give, when he shall have the last word, fearless of reply, I can not anticipate—but certain I am, he cannot in his way of construing the act ascertain the right and duty of Magistrates, without placing the most precious of our reserved civil rights under their foot.

Gentlemen of the jury, we are surfeited with visionary notions, and republican declamation. We have lost our relish for the old, I hope not obsolete, principles of liberty so cherished by our ancestors. From the abuse of things of the highest worth, we begin to forget their value. This, gentlemen, is a most dangerous state, and a most permanent evil. Every important invasion of right has been founded upon an abuse of that right, and has succeeded through the apathy created by such

by such abuse. Let us not fall into this vulgar error—let us give to the government and the people their legitimate rights, and not suffer either to transgress. Few are the rights reserved to the people, or which can be reserved under a stable constitution. The legislature must be sovereign. To ascribe to it actual omnipotence is nonsense and impiety, but to ascribe to it relative omnipotence is rational. No power can question or resist its acts, while it exists, but consistent with this acknowledged supremacy are the *reserved popular right of a free press, and an unshackled right of petitioning.* They are the great pedestals of our free and balanced constitution.—Impair either, and it totters.—Withdraw either, and it falls, and crushes the people and their liberties. Do I say that these privileges are incapable of abuse, and should not be contracted in their exercise by law? No—but I say that each should be exercised without previous restraint. Let every man publish at his peril—let no mandare exercise any previous controul over him—but if he publishes a public or private libel, let the law punish him. In the same way suffer nothing to impede the formation or presenting a petition; but if under the pretext of petitioning, men should assemble and violate the law, vindicate the violated law—but do not do, as his Majesty's government boasts to have done—suffer the offenders to escape, but attack the privileges which has been abused. Much has been said about the act of Charles II. in England against tumultuous petitioning.—This act grew out of the licentiousness in the reign of Charles I. and in my opinion, was intended to be repealed by the Bill of Rights. But does it not implicitly recognize and recommend petitioning through delegates? Is not delegation the best remedy of tumultuous petitioning? and will it be said, that the people shall neither petition in numbers or through delegates, who may collect and communicate their wishes? This cannot be said by any honest statesman. It is always useful to know even the transient sentiment of the people, though it may not always be wise to adopt it. But there are, and ever will be, statesmen, who wish to have it stopped; who always claim popular approbation, but never will, if they can avoid it, suffer their pretensions to be brought to any test. There never was a state empiric, who forced a bitter potion down the throats of the people, who did not say he

did so, to gratify their craving appetite. To guard against such mockery and insult is amongst the uses of the right of petitioning. In short, *facit per alium, facit per se*—and conversly every man being answerable for the acts of others, authorized by him, may depute others to do legal acts; so may many men appoint one or more deputies for defined legal purposes, so may many, having a common object, appoint deputies to confer with other deputies upon the same object—without this, many salutary pursuits might be absolutely frustrated. The concerns of agriculture—the concerns of trade—the concerns of charity—the concerns of religion might be sacrificed.—Neither can the exercise of this right depend upon the number or variety of the persons deputing, or the persons deputed. Such circumstances might, possibly, in some imaginable cases, be an ingredient to be left to a jury, with other evidence to satisfy them, that the purpose avowed was a pretence, and that the real object was to *represent* the people, or any portion of them, not to petition parliament, or to execute any defined preconceived object. But if men should be elected, or should assume to represent the people, or any portion of them, for general purposes, and if petitioning should be found by a jury to be a mere pretext, or if such usurpation of the exclusive right of the House of Commons, should, under any pretext take place, then the assembly so elected or usurping would be an illegal assembly from their very constitution, independent of any act, and guilty of an high misdemeanour of a treasonable nature, and liable to heavy punishment. This is enough for security, and not too much for freedom.

I come now to another principal ingredient in the crime as defined in the act and the indictment, but which the Attorney General treats as mere form—I mean the allegation, that the assembly, such as it was, was to be constituted *under the pretence* of petitioning parliament. He contends that pretence here means purpose; and that the crime was complete, even though petitioning was the *bona fide* purpose, and the sole purpose. I cannot think that any of you, gentlemen, unless influenced by his authority, can submit to his reasoning. If he be so confident in this opinion, why did he not use the words *for the purpose*, instead of under the pretence, in the indictment? Why, my Lords, did he not give us an opportunity of demurring to such an indictment, or seeking

to arrest the judgment, with a right of going to the dernier resort, if your Lordships should decide against us? If his argument be valid, such an indictment must be valid, for although it is good pleading to plead in the language of an act of parliament, it is equally good pleading to use equivalent language. Surely it cannot be intended to persuade you, gentlemen of the jury, to find the allegations of the indictment in one sense, and to pronounce the judgment of the law upon them, as if found in another sense, and, in this great question, to leave the traverser without any appeal, though the common sense of all mankind should cry aloud in his favour. I say, gentlemen, if you do find him generally guilty, your verdict will be conclusive, that he, and all with whom he was connected, acted under the pretence, obviously meaning the pretext or falsed pretence of petitioning parliament. If you believe it to be so, do not hesitate. But if you cannot infer it from the evidence, do not hesitate, this will be equal justice.

How has the Attorney General proved his exposition of the word pretence? He contends that pretence means claim, true, or false. I admit that pretence is sometimes used in this rare acceptation, and that Milton makes one of his Devils, (I do not recollect whether it be the chief Devil) use the phrase "just pretences," but I assert that in this statute, it does not mean claim.—Claim imports some right asserted on one side and disputed on the other. Pretence in this statute obviously means the motive alleged to influence the act, the object the person pretending says he is pursuing, and when so used it invariably imports either a "*suppressio veri, or a suggestio falsi*," either it holds out a motive or object of pursuit not at all in contemplation, or it conceals some other motive or object, which solely, or at least principally actuates the party.

This is still more undeniably so when the language used is "under pretence," and I think I might safely give up the question, if the Attorney General shall produce a single passage in any English Author, where such words are used without importing either falsehood or disguise. I cannot gentlemen avoid making this general remark, the legislature is about to define an high misdemeanor, it uses a word having, at least nineteen times out of twenty, a criminal meaning, but

having rarely a neutral or innocent meaning. Is it to be presumed, that when so used in defining a crime it is to be taken in its rare and innocent sense, and not in its usual and criminal sense; I much fear, gentlemen, if you were to find the traverser guilty, the word pretence could not be construed upon the record in any other than a criminal import, when punishment should be applied to the crime. But my Lords the Attorney General has cited those statutes upon which he relies, he refers you to 32 Hen. 8, in England, the same as 15 Char. 1st. in Ireland. This is an act to prevent the sale of protested "pretensed rights or titles," by persons not having possession, and he cites Lord Coke to shew that in expounding that statute, it was not considered as material whether the right sold was a good or bad title. Lord Coke could not have otherwise decided without the manifest absurdity, but can the Attorney General seriously contend that "pretensed title" in that statute, and pretence in the present have in their meaning any affinity to each other; does he really think that the word pretence in the act under discussion means claim, and that the legislature referred to persons who should assemble to assert their right or title to petition; was such a right ever disputed, could it be presumed it would ever be disputed? No; the legislature obviously meant to refer to persons, who holding out the false and affected purpose of exercising an unquestionable and unquestioned right, should really and in fact assemble for other dangerous and disguised purposes. Such is the meaning, which every plain understanding must extract from this statute, and it would be a sad necessity, if a legal or judicial mind should be compelled to construe it in a sense far from its so obvious and manifest import.

Neither do I feel any force from the epithet false, applied to pretence in the statute punishing the obtaining goods or money upon false pretences. Nothing is more common than to add by epithet, what is comprehended in the principal and substantive word. Wilful and malicious murder, wilful and corrupt perjury, are combinations in daily use, and occur in every indictment upon the subject; yet no man could doubt, but that murder and perjury would imply these epithets, when

used without them either in statutes; or in any other writing, " expressio eorum quæ taciti insunt nil operatur." The statute of Ch. II against tumultuous petitioning appears to me to be as little illustrative of the Attorney General's meaning as the others. It enacts " that no person or persons shall repair to his Majesty or both or either houses of Parliament upon pretence of delivering any petition, accompanied with an excessive number."

In the case here stated, the Pretence from the very nature of the subject, must be false, for it is impossible to conceive the accompaniment of an excessive crowd necessary to the mere delivery of a petition. Therefore it is quite reasonable, to infer a violation of the act from such accompaniment, but can the same reasoning apply to preparing a petition, preparing materials upon the subject, discussing the subject, and collecting the sentiments of those who are most interested upon it? But my lords and gentlemen of the jury, all this reasoning is superfluous upon my part, the legislature, as if presaging, that in after times some effort might be made to curtail the privilege of petitioning, under pretence of this statute, have shielded that noble privilege against all possible misrepresentation for in the final section it is enacted, " provided " that nothing herein shall be construed in any man- " ner to prevent or impede the undoubted right of " his majesty's subjects of this realm to petition his " majesty, or both houses or either houses of parlia- " ment for redress of any public or private grievance."

The Attorney General has founded an argument upon this proviso, being in the fourth and last section of the act, and not in the first section where the crime is defined. As I cannot comprehend this distinction, I shall not attempt to combat it, but I will appeal to the common sense or the professional sense of all who hear me, whether words could be devised more perfectly and comprehensively protecting a right from impairment or diminution; try it by this criterion, suppose it was agreed by every member of parliament to leave the right, and the exercise of the right of petitioning controverted, and to provide a clause for the purpose, and suppose this clause was proposed as sufficient for the purpose. Could the most jealous and suspecting advocate for

popular rights reasonably object to it? If he did; would he not be considered as factious and unreasonable? But attend to the words, "nothing in the act shall be construed in ANY DEGREE TO IMPEDE the *undoubted right to petition*," can it be said that deputation cannot afford any facility to the exercise of the right of petitioning? On the contrary is it not manifest that in many cases (and in none so strongly as in the present) that without the aid and instrumentality of agents or deputies or committees, I care not what name is used, while the purpose is *innocent* and *laudable*, this invaluable privilege would lose more than half its value? and is it not equally manifest, that to take away such facilities in the exercise and enjoyment of such a right, would be in some degree to impede it. This appears to me to be too plain to need further enforcement or illustration. But suppose the statute obscure or doubtful, In such cases the history of the times and the evil to be remedied, are always looked to as the interpretation of the true meaning.

What was the evil which in 1793 induced the Attorney General, and the government of that day to introduce this bill; in stating it I am vindicating the memory of that Attorney General and of that government, from the misconstruction, and the misapplication of the act, by their successors of the present day. There existed shortly previous to the enactment of that law, a body representing the whole province of Ulster in the illegal and dangerous sense which I have ascribed to the term. They sat at Dungannon, they acted and resolved in their own names as general representatives of that province. They abstained from no subject legislative or executive. They did not confine themselves, or pretend to confine themselves to any *defined preconceived* object. They did not pretend to seek, even a subsequent adoption or ratification of the measures or resolutions they adopted, their avowed purpose was to destroy or new model, all or most of the antient and venerable departments of the state and constitution. They would annihilate the boroughs, purge the house of lords of ecclesiastical intermixture, extend the elective franchise to the whole rabble, interfere with the executive in the prerogative of making peace and war, and in short, controul and

dictate upon every subject. In the name of God can any man say, there is any resemblance between an assembly such as I have described, and a Catholic committee such as I acknowledge is now in existence; for the *sole bonâ fide* purpose of preparing a *petition for the subsequent* ratification and adoption of individuals of their body. If the truth of the alledged purpose be doubted, let that question be left to any jury, however selected for their prejudices, provided they be like you men of sense and integrity. This represetantive body of Ulster, had actually convoked a representative body of the whole people of Ireland, to sit at Athlone upon the exact principles of their own formation. It was against this portentous and unconstitutional assembly, that the convention act was provided, and not against any Catholic Committee either then in existence or meditated, as I shall hereafter more fully demonstrate. But I shall first lay before you the resolutions of the Ulster convention held at Dungannon, taken from a pamphlet published at the time by Mr. Joseph Pollock now chairman of the County of Down. He was himself a member of that convention, and his mind being awakened to a sense of the unconstitutional nature, and dangerous tendency of that assembly, he publicly and manfully warned the Parliament, and the nation against them. Listen I entreat you to their resolutions, they were passed on the 15th of February 1793, while parliament was sitting.

" RESOLVED, That it is the constitutional right of " the people, and essential to *the very being of* THEIR " liberty, to be FULLY and FAIRLY represented in their " own house of parliament.

" That *the present state of the representation* in " the house of commons is *partial* and *inadequate*, " subversive of the rights of the people and, an IN- " TOLERABLE GRIEVANCE.

" That it appears to us, that several LORDS spiritual " and temporal, as well as COMMONS, direct the re- " turn of more than TWO HUNDRED members of the " Irish house of commons, being not *one third* of the " representation of *the people*.

" That it is the opinion of this meeting, that all " boroughs should be disfranchised, and representation " established on FAIR and RATIONAL principles, by

"extending the elective franchise equally to persons of "every religious persuasion; by elections frequently re- "peated, and by a distribution of representatives, pro- "portioned to the *population* and *wealth* of the country.

"That deeming a complete parliamentary reform, "essential to the *peace, liberty* and *happiness of the* "*people*, we do most solemnly pledge ourselves to each "other, and to our country, that we will never aban- "don the pursuit of this important object; but zea- "lously and steadily persevere, until a *full* and *fair* re- "presentation of the people shall be unequivocally ob- "tained.

"That a power be vested in a committee, consisting "of thirty persons, for the purpose of re-convoking "this assembly (as occasion may arise) until the consti- "tuent body is pleased to return another representation "of the province. AND THAT on a recommendation by "letter to *William Sharman*, Esq. at Moira, signed by "seven of the committee, he shall by circular letter to "the rest, procure the sense of a majority, and if the "measure of a *provincial* meeting be by them approved "of, he shall forthwith issue a summons in the name of "the committee for that purpose. (Here follow the names of the committee.)

"That the above named Committee be authorized "to communicate with the other provinces of this king- "dom, at this important crisis, and to consult proper "means of calling a *National Convention* at a future day, "should circumstances render such a meeting unavoid- "ably necessary.

"Resolved, That we behold with indignation an "intention of embodying a MILITIA in this Kingdom, "a measure which only has *ministerial influence* for its "object, which we deem *burdensome* and totally *unne-* "*cessary*.

"Resolved *unanimously*, That it is with infinite con- "cern we behold this Kingdom likely to be involved in "the horrors and expenses of a *foreign war*; a war by "which, as a nation, we can gain nothing: but on the "contrary, *must* expose our commerce to depredation, "and our country to unprovoked hostility."

That the meditated Athlone convention, and not the Roman Catholic Committee was the object, as well as the cause of this act, will fully appear from the debates upon it. Mr. Wolfe, the Attorney General of the day,

and Mr. Hobart, the chief Secretary, the framers and introducers of the act, expressly disclaim any reference to the Catholic Committee, or any intention to interfere with the right of deputation for any limited *preconceived* object, and although the opposition of the day did oppose it as touching upon the right of petitioning, it is much more reasonable to take the sense of the House from those with whom a vast majority agreed and voted, than from the jealous construction of a few opposition members. [Here Mr. Burrowes was proceeding to read passages from the debates upon the Convention Act, when the Chief Justice observed, that such debates were not admissible evidence, and therefore ought not to be stated.]

Mr. Burrowes proceeded—My Lords, I submit to the opinion of the Court, and shall no further mention those debates; but I shall refer you to cotemporary evidence at once admissible, and to my understanding conclusive upon the subject. I mean the act of the 33d of the King, the very act from which the Attorney General read the affecting detail of remaining Roman Catholic restrictions; this act containing such liberal concessions to the Roman Catholic body was passed in the same sessions with the Convention Act, and perhaps received the royal assent the very same day. It was the result of a petition framed by the Catholic Committee—Roman Catholic deputies, avowed members of that committee, negociated again and again with the Irish government, and with the English government, particularly with Mr. Pitt and Mr. Dundas upon the subject; they were introduced to, and graciously received by the King himself about that period. It was then deemed wise and constitutional to hold intercourse with men who understood and could truly communicate the sentiments and feelings of their community. I shall read the recital of that act—"Whereas various acts of Parliament have been passed, imposing on his Majesty's subjects professing the Roman Catholic religion, many restraints and disabilities, and from the *peaceable and loyal demeanor* of his Majesty's Popish or Roman Catholic subjects, it is fit that such restraints and disabilities be discontinued." Now I ask is not this recital decisive evidence, that the Legislature did not consider the Roman Catholic Convention, through whose mediation the very act passed, an illegal or unconstitutional assembly? Or is it to be conceived, that

they would pass an act with such a recital, and immediately after denounce the body through whose mediation it was obtained? Such a supposition would not be more derogatory to the character of the Roman Catholic, than to the truth and consistency of Parliament. The Attorney General cannot conceive any use in delegation—he says it would require only a capacity of writing a few lines, praying a repeal of the test acts which any individual might perform, to bring the Catholic demands fully before Parliament, where no doubt, however introduced, they would receive a full and candid discussion. My Right Honourable and Learned Friend is one of the worthiest and ablest men living—but I will take the liberty of telling him that he is in a state of more than Bœotian darkness as to either the history or present state of his Roman Catholic brethren—he would not otherwise speak as he has spoken—act as he has acted. I will tell him, that something more than the simple process he recommends, is, was, and always will be necessary to a discussion of the claims of a people, seeking a restoration of privileges of which they have been deprived; I will tell him that if the Roman Catholics of Ireland had confined themselves to the simple mode which he recommends, they would not now be a People, or Ireland a Nation. I will give him a very summary review of the proceedings of the Roman Catholics, in order that he may judge from experience whether delegated committees were serviceable. From the Revolution to the accession of Geo. II. the Roman Catholics were mute, they did not address the Crown or the Parliament for any amelioration of their state, they merely made faint efforts to resist each additional penal law. During that period they were in a condition more abject and grovelling (to borrow a phrase from a learned and eloquent Friend of mine) than the beast that browzed upon the land which they cultivated by their labour. Their silence; their declining to address the Crown or the Parliament during that period, was frequently commented upon, as indicating a dissatisfied and stubborn spirit. It was so construed by the *Tories* during the reign of Queen Anne, and by the Whigs during the reign of George the first, and furnished both with a pretence, amongst others, of adding largely to the penal code. Upon the accession of Geo. II. in 1727, it was deemed advisable to break this silence,

and silence this pretence, and accordingly Lord Delvin, and the principal of the Roman Catholic gentry presented a most loyal and duteous address from the Catholic body to the then Lords Justices, to be presented to the Throne. It never has been found an easy task for the oppressed to please his oppressor. To this loyal address no answer was given—no public notice was ever taken of it—possibly it never reached the King's hand, and that if it did, it might have touched his heart. But it did not pass wholly unnoticed and without effect—Primate Boulter in a letter to Lord Carteret professes much alarm at this first act of the Catholics as a community—he seems to consider it as a most portentous phenomenon; and immediately after, in the very same year, by the 1 Geo. II. ch. 9. sec. 7. they were deprived of the elective franchise. The following year a bill was introduced to prevent Roman Catholics from acting as Solicitors. Several individuals in Cork and in Dublin raised a subscription to defray the expence of opposing this bill—an interdicted priest gave information of this foul conspiracy (as it was called) to bring in the Pope and Pretender. The transaction was referred to a committee of the House of Commons, who actually reported that £.5 was collected, and resolved, that it appeared to them, that under the pretence of opposing heads of bills, sums of money had been collected, and a fund established by the Popish inhabitants of the kingdom, highly detrimental to the Protestant interest—and they resolved to address the Lord Lieutenant that he might issue his proclamation to all Magistrates, to put the laws against Popery into execution. This I presume is the precedent upon which the Attorney General has founded his advice to his Majesty's government to issue his proclamation to Magistrates to disperse Roman Catholics who should assemble as delegates for the purpose, or under the pretence of petitioning. So far the Roman Catholic concerns proceeded without any committee or delegation—with what success is too well known. In the year 1757, upon the appointment of the Duke of Bedford to the Viceroyalty of Ireland, the prospect of the Roman Catholic people began to brighten, and at the same period a committee was formed to act for them, and from that hour to the present, they have at all times, when they approached Parliament or Government for any relaxation or favour, acted through the in-

tervention of *persons delegated* at different times in different ways, and varying as to rank and numbers. These committee men or delegates, openly acted for, and in the name of the Roman Catholic people, conferred with *successive governments*, were principally instrumental by their zeal, industry and talents, in procuring every relaxation of the penal code, and never until this day incurred the suspicion or displeasure of any government. In 1757, under the auspices of the Duke of Bedford, and with his concurrence a most satisfactory public declaration of religious opinions, as far as they related to civil duties, calculated to dissipate the false notions at all times entertained upon the subject, was made and published by the whole Roman Catholic clergy of Ireland. Immediately after was the first Roman Catholic Committee formed, with the entire approbation of the same Viceroy, which assembled and met in the Globe Tavern, in Essex-street. Among the first committee-men, were some men well known to literature, Doctor Curry, O'Connor the Antiquarian, and Mr. Wyse, of Waterford. This committee was shortly after enlarged according to a plan of more extended *delegation* proposed by Mr. Wyse. In 1759, the Duke of Bedford delivered a message to Parliament from the King desiring them to provide against invasion. How the Roman Catholic people felt, or would act upon such an event was a matter of serious expectation to all. If there was any reason to doubt it, the liberal and enlightened policy of the Duke of Bedford removed all doubt; and upon the first alarm of the invasion of Conflans, the Roman Catholic Committee prepared a loyal and animated address, which was submitted to their body at a public meeting in Dublin, and was signed by above 300 merchants and others, and was then presented to John Ponsonby, the Speaker, by Messrs. Crump and M'Dermott, committee-men, to be transmitted by him to the Lord Lieutenant. A most gracious answer to this address was returned and published in the Gazette. The Speaker summoned the two delegates to the House of Commons, and at his instance the address was then read—Mr. M'Dermott, in the name of his body thanked the Speaker for his condescension, and the Speaker replied in flattering language.

From the first formation of a Roman Catholic Committee to this day, it was either continued, or was called

into existence, whenever any subject of discussion arose between that body and government, or parliament. Every relaxation of the law which was obtained, is principally ascribable to their zeal, activity and perseverance. The Attorney General is well acquainted with the truth of the maxim, "*lex vigilantibus non dormientibus inservit*;" and he may rest assured, that the maxim is as true in politics as in law. The first territorial acquisition of the Roman Catholic body was not very splendid. By the 11. and 12. George III. they are enabled to take fifty acres of unprofitable bog for sixty one years, with half an acre of arable land adjoining, provided that it should not be within one mile of a town, and that the lease should be void, if half the lands should not be reclaimed within twenty-one years. In 1777, they obtained, through their committee, a most important concession; the right of taking leases for long terms for years, and of devising their lands. In 1782, their committee again acted; their claims, their condition, and their conduct, were brought into public and full discussion. Several disabilities were removed, and they were placed on a footing of perfect equality with their Protestant brethern, in respect of the right of acquiring or disposing of lands From this concession, political equality appears to me to follow as a certain corollary, however for a time it may be thwarted or postponed. In 1792, this *modernly denounced* committee were again in activity, and the Bar was thrown open to the Roman Catholic body, with however a most impolitic proviso, that no Roman Catholic should be appointed a King's Counsel; that is, precaution was taken, when they were invited and received into a profession which above all others improve popular talents, and gains popular influence, that they should be in habitual, and as it were regimented opposition to the Crown, upon all questions of prerogative which might arise in our courts, and that even the King should not be empowered to entitle himself to the permanent service of an one of them, be his talents ever so splendid, his learning ever so pre-eminent. But when did pride or prejudice ever reason? In 1793, the Roman Catholic committee made their last successful effort. I have forestalled much, indeed almost all, that I intended to say upon that committee and that period. It consisted of delegates from all the counties, and was somewhat more numerous and more fully attended than the former committees, principally because it had

been asserted as it is still asserted, that the Roman Catholic people at large, felt no interest in Roman Catholic Emancipation. A foul and unnatural calumny upon the good sense and sensibility of an intelligent and feeling nation!

I shall again refer you to that affecting catalogue of privations, which the Attorney General read, with such visible involuntary public sensation; and I shall tell you, that that catalogue details but a small portion of privileges from which the Roman Catholic people are shut out. The orders of council to which they are left subject, have a most extensive operation, and they are in effect deprived of the enjoyment of almost every privilege, given to freemen in corporate towns, in a kingdom where corporations abound, and where those exclusive privileges are so vigilantly asserted. They are also subject to several important disabilities, not connected with the Test Acts. For instance, no Roman Catholic, though he should possess half—the whole, Bank of Ireland stock, can be a Director of the Bank of Ireland. These restrictions and exclusions meet the Roman Catholic in every quarter of Ireland, and affect his interest, and hurt his feelings, in a thousand ways not known to my Right Hon. Friend. But suppose it otherwise; suppose the higher orders alone interested in the present Catholic question; suppose the higher orders alone labour under disabilities, can the Attorney General know so little of human nature, as not to feel that the lower orders will make common cause with the higher orders of their sect, even in matters of mere pride and speculation? In my opinion, if the only difference between the Protestant and the Catholic were, that the latter should be prohibited from wearing lace upon their clothes, or having livery servants, this ridiculous and invidious distinction would be felt by the meanest peasant, and might at some unlucky crisis produce the most disastrous consequences. I therefore do assert, that no candid man, who understands the Catholic question, and the state and condition of the Catholic people, can think it a mere form to petition, or deny the utility of delegation towards effecting the laudable purpose, and constitutional object of their pursuit. Suppose it were true that all restrictions might be removed by the repeal of the Test act, and that such repeal might be effected by a single line, does it follow, that no measures ought to be, or can be legally adopted, to induce the government or parliament

to enact that short and simple bill? Is it impossible that ignorance might exist, as to the variety and extent of the very restrictions, and misrepresentation or misunderstanding prevail, as to the grounds upon which they were imposed, and the probable consequences of their removal? Gentlemen of the Jury, such things are not only possible, but certain; and although Protestant liberality has made great advances in modern times, although rooted prejudices have been dislodged, although the Roman Catholic of this day, has received from the Protestant of this day, concessions calculated to obliterate, and which have almost obliterated all recollection of past animosities, all reflection of the barbarous and civil dissensions which disgraced our ancestors, and embittered their lives, although much has been done, much still remains to be done; and until that shall be done, we cannot feel the confidence of an united people: the enemy will not feel the terror with which such a character must ever strike the invader. Instead therefore of impeding the object of this delegated committee, it ought to be the anxious wish of every good Irishman, and every loyal subject, to give it full success; to wipe away at once, at this most interesting moment, all restrictions and distinctions; to invite our Roman Catholic brethern to a full participation of every civil right, and to bind him by interest, gratitude and affection, to unite with his heart and hand in defending our common rights, our common country, and our common constitution.

In dismissing this subject, so barren in evidence, and so pregnant in observation, I had nearly forgotten an important topic. I really think, that if the Convention Act were seriously and liberally construed, that the admitted object of Catholic pursuit would, in itself, exclude them from the operation of the law, and that they ought not to be considered or treated as men seeking an alteration of "matters established by law in church and state." Recollect, gentlemen, that they are not seeking to innovate or destroy—they seek not to pull down the common constitution of our common ancestors—they seek not to annihilate any, even the lowest department of the state, they only require to be received and treated as joint proprietors and co-heirs of our noble constitution—they seek to widen its basis, and add new pillars and supporters to the edifice of liberty and law. In doing this, let it not be mistaken, that they look to any transfer of power, or

any direct or immediate investiture with any privilege. No, gentlemen, they merely seek *capacity*, and leave the *right* of conferring it where it *pre-existed*. They seek to unshackle the prerogative of the Crown—they seek to give to the electors a wider range of choice—they seek to vindicate the best principles of every free constitution—the connection between property and power. In every well constituted state, property and power are connected in all its departments; to separate them is to sow the seeds of disease and agitation. They gravitate towards each other with as fixed a law as prevails in the physical world, and tranquillity cannot exist under their forced and unnatural separation. They must—they will finally unite. Either property will clothe itself with power, or power will seize upon property. In a pure despotism, there is but one proprietor, so that in fact the Roman Catholics are seeking not only the grace but the shield of property—not only what would ornament, but what would secure their acquisitions. Can it be just, can it be wise, at any time, or in any country, to disfranchise property and rank of their legitimate and constitutional trusts? Can it be wise or politic to permit the great bulk of a nation to accumulate property without bounds, and to acquire lands and interests in lands without limit, and to close the avenues to all the great honors and distinctions of the state against them? Ambition is a passion natural to man, and if great proprietors, and their descendants be shut out from all legitimate gratification of that in-eradicable appetite, they will be tempted to courses and pursuits equally dangerous to the community and themselves. In a country so mis-organized, if ever there should arise a strife between the lower and higher orders; if ever republican frenzy should agitate the country; talent and wealth will be driven into the ranks of folly and disorder, to discipline and lead them. These observations, at all times true, apply with augmented force since the Union, and from a consideration of the grand strife, in which these united islands are engaged. It must be the first wish of every honest subject to render that union universally effectual; to the purpose of uniting every heart and hand against the common enemy. Such was the avowed object of the statesman who proposed that measure, of which Catholic emancipation was intended to be a part. It is the anxious wish of those who opposed it, and of none more than me, that that object should be

accomplished. Perhaps they would not consider the merger of national independence, as too great a prize for so inestimable an attainment. But while the Roman Catholics are excluded from a participation of the offices and honours and power of the state, can there be any thing like national amalgamation? Can the Roman Catholics of Ireland be taught to feel? Is it possible, in fact, that they will feel, that there is a fair legislative union between the nations? But will they not be effectually told by every man who wishes to inflame them—will not their own feelings tell them, that Ireland is more than ever provincial? Will not exclusive Protestant legislation be felt by them as the disfranchisement of Ireland? On the contrary, by giving full effect to the pursuit for which Mr. *Sheridan* is sought to be convicted, we render the nations really, and not nominally united. We enable the Crown to animate the zeal, and reward the exertions of his Roman Catholic subjects in every department. We take from the enemy a formidable reinforcement of irritation and disaffection, and we interest and unite all the property, talent and feeling of the nation in defence of the common cause. I would appeal to my right honorourable friend himself, whether what I state be not founded in truth and nature. He has earned an ample fortune and an high reputation. He has children to inherit his acquisitions, and who are, no doubt, emulous to tread in his paths? Would he be satisfied to leave them his property bereft of the privileges properly incident to it? Would he feel at ease, if all incentives to legitimate ambition were extinguished, and their feelings were exposed to dangerous ambition? I think he would not. I well know that his rooted loyalty and strong reason would protect him from treason and even sedition, but he would pine under restraints that robbed his acquisitions of more than half their value; and he would lament that he had not exerted his great talents, and planted his family in some other soil.

The Attorney General has entered largely into a defence, indeed a panegyric of his Majesty's government in Ireland for their proclamation against (I will say it, though he does not admit it) the Roman Catholic people of Ireland, and of this, avowedly, state prosecution. I applaud his manly avowal, that he advised those state acts, though I cannot but lament the gross indiscretion of

such advice, from whatever quarter it might originate. His own statement, in my opinion, condemns both the justice and policy of the measure. He has stated that a series of seditious and inflammatory libels too gross for the seditious press of this city, (to use his own language,) were daily and publicly uttered in a committee with whom he has not so much as attempted to connect the present Roman Catholic committee by any evidence. He expatiated upon the patience and temper of the Irish government, in calmly witnessing and submitting to such outrages, and waiting for the voluntary death and dissolution of that assembly. He has more than insinuated, that that assembly was bottomed in treason, and has exerted himself much, to alarm your fears and excite your prejudices by the picture he has drawn of their conduct and designs. Gentlemen, is it possible to hear this without at once seeing its irrelevancy and unfairness? Is the present committee to be condemned and punished for their mere existence, because there was another committee, in which individuals were intemperate and seditious? He ought not to be listened to, while stating such enormities, which, if they existed should have called forth, and must have called forth the vigour of the law. But to suppose his statement perfectly true and unexaggerated, what is the reasonable inference? Not that a subsequent committee, of which the Fingalls, the Southwells, the Barnwells, the Bellews and the Byrnes, the Catholic prelates, and the Catholic peers; those individuals and classes of the Roman Catholic body, in whom every previous Irish government, placed unbiassed confidence, composed a part, should be denounced and dispersed, independent of any act, or the expression of any sentiment; but that the government which should suffer such outrage to go unpunished (if any there were), and should attempt to punish where no offence has been committed, or is likely to be committed, are themselves objects of the justest condemnation. But there is a further, and more alarming inference—one in which Catholic and Protestant Irishmen and Englishmen are equally interested. It is, that government is not persecuting the crime, but hunting down the privilege—that they have no desire to punish any offender, be he ever so atrocious, but cannot endure that the privilege of petitioning should assume such a shape, as that the sentiment of the whole people should be unquestionably pronounced. If this be their object,

(as it unquestionably is) they have acted with judgment; they have acted with candour. They have attacked the privilege in its strongest hold; they have attacked it where it is most defensible. They have hazarded defeat; but if they obtain a victory, the privilege is for ever vanquished. The precedent of this day will be pleaded against every species of delegation, and when the concentrated force is routed, it will be easy to disperse, misrepresent and put down individual petitions. I look to you, gentlemen of the jury, for protection against such consequences. The Irish government, instead of claiming credit for their conduct, should, in my opinion, say (sinners as they are:) "We have left undone those "things which we ought to have done, and we have "done those things which we ought not to have done." Their conduct resembles the conduct of an intoxicated bravo, who being too much oppressed by liquor to resent real or imaginary injuries or insults, as soon as he becomes semi-sober and semi-vigilant, should rush forth into the high-way, and knock down every man he meets—peer, prelate, or peasant.

I fear, my lords, I have committed an unwarrantable trespass upon the pubilc time. In doing so, I have but followed the example of my honourable and learned friend, who has said so much upon general subjects, and so little upon the case of the traverser; whose gigantic statement is so disproportioned to the pigmy prooffs that followed it. I fear I have even exceeded him in prolixity, which you will rather ascribe to his superior powers of condensation, then to any desire upon my part to dwell unnecessarily upon any topic. In truth when I turn my attention to the facts in evidence my astonishment is encreased, that Doctor *Sheridan* was ever brought to trial. Shut out from your minds the aspersions which have been cast upon other men.—Disengage your loyal feelings from that appeal which has been so artfully addressed to them; do the traverser the justice of not presuming that he must have bad designs, because he is a Roman Catholic, and of not ascribing to him every seditious act committed by, or ascribed to every man of his religion. Which of yourselves could bear this test; try him as every man should be tried by his own acts established in evidence against

him, and see what that evidence is? Two witnesses were examined who swore that Doctor *Sheridan* presided at a meeting of Roman Catholics, who elected five persons to prepare a petition, and they added to *represent* them in a Catholic committee, one of them afterwards retracted the word *represent* as forming any part of the resolutions passed and positively swore it did not, and the other swore that he could no be certain that the word *represent* was used, and they both admitted that they had the very resolutions in writing and gave them in writing to those who conduct the prosecution. I do not think the word *represent* can avail any thing. If delegates were appointed in a criminal sense to represent the people, no use of language could vary the offence, or shelter the culprit, and if the delegation was from its object innocent, no phraseology could render it guilty; I strongly suspect that those who managed this evidence and kept back the writing are of a different opinion. But if the words were considered as important, it is impossible that you upon the evidence can assume that it was used. From those witnesses it appeared that no other business was mentioned but business of petitioning, and one of them swore that he believed no other object was in contemplation, and that he believed that the petition when prepared was to be submitted to the Individual Catholics, for their adoption and signature. If the evidence stopped here would the Attorney General say Mr. *Sheridan* was guilty under the convention act; we must say so for he has not drawn any line, and has levelled his argument and this prosecution against all delegation or deputation for the *purpose of petitioning*. That which is expressly protected by the act would appear as he construes it to constitute the offence. But the evidence has not stopped here, Mr. *Huddleston* whose evidence I do not mean to impeach has proved from memory the following resolution as having passed at an aggregate meeting:

"Resolved, That said Committee do consist of the Catholic Peers and their eldest sons, the Catholic Baronets, the Prelates of the Catholic Church in Ireland, and also ten persons to be appointed by the Catholics in each County in Ireland, the Survivors of the Delegates of 1793, to constitute an integral part of that

number and also of five Persons to be appointed by the Catholic inhabitants of each parish in Dublin."

Now I do not think that those resolutions are sufficiently proved by parol evidence, it appearing that they exist in writing, to be received as the act of that aggregate body, so as to affect persons not present; but I shall wave this objection. I boldly and confidently maintain, that there is nothing in these resolutions, or in a committee formed upon them, seditious, illegal, or violatory of the Convention Act; and if all I have said be not erroneous, I have already established, that such an assembly is not as it is contended to be, upon the other side, illegal, independent of any concealed or illegal pursuit, or any libellous or seditious speeches used in it when assembled; and I repeat it, and it cannot be too often repeated and inculcated, that to decide otherwise will be vitally to injure the right of petitioning, and totally to disregard the constitutional saving of the Convention Act.

All the resolutions given in evidence, are precisely conformable to the functions invariably performed by Catholic committees since their formation, and I cannot discover any part of them denoting any bad object, criminal motive, or illegal pursuit. The resolution defining the constituent parts of the committee, has been much relied upon, and grossly misrepresented. How does this part of the case fairly stand? A committee is formed to collect information, to prepare a petition, to suggest arguments in favor of that petition, to discover prejudices that impede, to obviate difficulties, to solicit support, in short in every rational and fair way to promote the success of that petition. The disabilities sought to be removed, affect the peers, affect the commons, affect those who reside in counties, affect those who reside in cities, in short affect every order and department of the Roman Catholic community, and it is now objected that there are deputies from every order; and it is further objected, that the few persons who now survive of the committee of 1793, so favoured and cherished by the then government and parliament, and members of the committee. They are called estates general, are represented as usurping all the functions of the legislature and government. This is cruel mockery! If such be their constitution or their views, they are guilty of high treason, and ought to be prosecuted as such. But shall this be taken upon assertion? Shall this assembly be deemed illegal, because it has re-

ceived an infusion of the peers and the prelates, who have always been considered as a counterpoise to the too great eagerness of popular pursuit? If the prelates and the peers had been omitted, the clamor against the committee would have been much louder, and much more plausible; but the utmost effect that the numbers and constitution of the committee can have, is to become an ingredient in a jury question, if any jury question should arise, as to the real object and pursuit of such committee. Doctor Sheridan challenges such a question to be left to any jury, but they do not venture it upon the other side, but call for your verdict upon the ground of general, unevidenced and unapplied imputation, and a gross misconstruction of the Convention Act.

Gentlemen of the Jury. Upon this inexhaustible subject I have left much unsaid; yet upon the grounds I have urged I shall now leave it to your decision, only again imploring you to read the charge which you are sworn to try, and to compare it with the evidence which you have heard from the witnesses, and not with the calumnies which have been every where uttered. To find the Traverser guilty, you must upon your oaths find in the very langnage of the indictment, that the Catholic committee intended to be appointed, to be "a Committee of persons professing the Roman Catholic religion, to be thereafter held, and to exercise a right and authority *to represent* the inhabitants of Ireland, professing the Roman Catholic religion, *under pretence* of preparing petitions to parliament." You must in fact convict the Roman Catholic subjects of this realm, of an offence approaching to high treason. You have no evidence to warrant this; and you cannot have any rational wish to create or supply such evidence. The Catholic body of this day owe their Protestant brethern of this dav great obligations. Believe me they are deeply sensible of the debt, and are not the less worthy to have that debt augmented, by the eagerness they display to be fully emancipated, to be perfectly amalgamated with you in constitutional co-existence. No wise and good man would wish at any time, to disappoint this laudable impulse. No man not a maniac, would seek to disappoint it a moment, when all that is dear to us is in such peril, that united enthusiastic efforts are necessary to common security. Gentlemen, your Roman Catholic brethern await a verdict, which is to pronounce upon

their principles and pursuits, with agonizing anxiety. There is not a city, town, village, or hamlet in Ireland, in which the result is not at this moment looked for, with breathless expectation. It is looked for in England with little less anxiety. They cannot be indifferent to the truth or falsehood of the charge, made by the Irish Government upon the Roman Catholic subjects of Ireland. It is looked for by the common enemy, with an anxious wish that the accusation may be true—they must derive the highest gratification, and possibly the strongest motive to act, from a Protestant verdict against the Roman Catholic people. Gentlemen, pronounce a verdict of Not Guilty; relieve your fellow-subjects, and disappoint the common enemy. Do not, Gentlemen, apprehend that so gratifying a result would be followed up by intemperate joy, or dangerous exultation. No bad feeling can mix with the pure delight which such an event would universally diffuse; but if there were danger of excesses from unbounded joy, those Roman Catholic noblemen and gentlemen who are implicated in the charge, will moderate the triumph, and guarantee the tranquillity of the country. The gallant Fingal will guarantee it. He stands before you to pledge his high character for the conduct of his brethern. You know you may trust him; you know that in the hour of danger he lifted his sword equally, against the rebels of all persuasions; he despised false and perishable popularity; he proved his title to be received as a supporter of the throne, and he would not sully that title, and he never has sullied it by any seditious or intemperate act.

May the God of truth and justice subdue your prejudices, awaken your consciences, and enlighten your minds, to find that verdict which will tranquillize the country, unite the people, appall the enemy, and place these united islands in a state of such proud defiance, that no enemy will dare to pollute our shores.

Mr. *Burne.* My Lords. The counsel for Mr. *Sheridan* having consulted together, are of opinion, that the Crown has made no case either in law or in fact, for to rebut. We therefore agree upon the propriety of not calling any witnesses.

Mr. *Solicitor General* rose to reply.

Mr. *Goold.*—My lords I call upon the court to disallow any claim on the part of the crown to reply. We have called no witness, there has nothing new arisen, nothing by way of surprise, which can require observation from the counsel for the prosecution, and by a late case even the personal right of the Attorney General has been questioned where he is the prosecutor, which is not the case here, it being by indictment, and not information. In the case of the *King* a *Lord Abingdon*, 1. *Espinasse's Nisi prius reports.* Lord *Kenyon* observed, that as the defendant had called no witness he thought it irregular in the counsel for the prosecution to reply, and said that though the Attorney General might be entitled to it, it was a privelege, he thought no other council for the posecution ought to have, that he had never claimed it while a counsel and holding a high office under the crown and that he would not now make a precedent of what he disapproved.

Mr. *Solicitor General.*—There is certainly nothing in that case to warant the departure from the general practice of this country that the reply should be with the crown and there is a very remarkable instance of the extent of the adoption of the rule, in the case of high treason against the unfortunate *Mr. Emmet* where the court allowed *Mr. Plunket* to address them although the prisoner made no defence.

Mr. *Driscoll.* My Lords, there was a case on the Leinster circuit tried before Mr. *Justice Osborne*, in which he decided against the right. It was the case of the *King against Tench, at Wexford*, in which I stated the case for the Traverser, and we produced no witnesses. The counsel for the Crown insisted upon their right to reply, and Mr. *Justice Osborne* ruled it against them.

Mr. *Justice Osborne.* The impression upon my mind is, that the rule is so, and I did so decide it in Wexford—however, I don't pretend to say that decision was absolutely infallible—but I think if the Crown has the right, there ought to be an authority to prove it—it must have occurred in some case or other before.

Mr. *O'Connell.* Mr. *Justice Day* likewise so ruled the point on the Munster Circuit, a man of the name of *Mason* was indicted for a misdemeanor, there was no evidence for the Traverser, and I made the objection.—*Baron Smith*, before whom the case was tried, hesi-

tated, but said, he would consult with Mr. *Justice Day*, then in the other Court, and it was decided by their Lordships that the objection was valid, and no right of reply lay in the Crown.

Mr. *Justice Day.* It was my decision.

Mr. *Attorney General.* In ordinary cases, the Counsel for the Prosecutor, where the Traverser calls no witnesses, is not entitled to the reply—but in all cases where the prosecution is by the Attorney General, he has that right, as a personal privilege.

Mr. *O'Connell.* As the Attorney General has already stated the case, he cannot now appoint a delegate, under the pretence of speaking to evidence.

Mr. *Townsend.* Before the case of the *King* a. *Lord Abingdon*, the right to reply in the Attorney General was never questioned. It was the uniform practice in this country, and sanctioned by the decision in the *King* a. *Emmett*, if it be a personal right to the Attorney General—it will not be argued that he cannot transfer it, the right being personal to him, in respect to the nature of the prosecution, and in his absence, the Solicitor General is to all intents the Attorney General, and his representative.

Mr. *M'Nally.* I cannot say what may be the modern practice of the *King's Bench in England.* But in the case of the *King at the prosecution of Charles Macklin*, a. *Clark and others, before Lord Mansfield*—the Defendant's counsel having stated a case, but not calling any witnesses, the Chief Justice refused to allow Mr. *Dunning* to reply. The case of *Robert Emmett* was one of High Treason. Mr. *Burrowes* and I were assigned him as counsel—the prisoner prohibited us from speaking, so that the Crown had two *last words*—Mr. *O'Grady* stated the case, and Mr. *Plunket* replied, although no observation was made by the prisoner's counsel, upon either the law or the facts. Many men of deep information thought at the time, that it should never be taken as a precedent.

Mr. *Justice Daly.* As I take this case, it goes rather in favour of the Attorney General—if the right be personal with the Attorney General, it must mean where he takes the leading part in the prosecution, and if this right is in him, he may unquestionably transfer it.

The *Chief Justice.* I always heard it asserted that the Attorney General had the last word.

Mr. *Perrin.* My Lords, the case of the *King* a. *Cox* is precisely in point, the circumstances were exactly those of the present case; it was a prosecution by indictment, instituted by the Attorney General, and tried before *Lord Norbury*, and *Baron George*, at the Commission Court in *February* last. The Attorney General stated the case for the Crown, and examined his witnesses. Mr. *O'Connell* stated the case for the Traverser, and called no witnesses—*Serjeant Moore* for the prosecution rose to reply. The counsel for the Traverser objected to his doing so, upon the same ground as in this instance, and cited *Lord Abingdon's* case. *Serjeant Moore* insisted on his right to the last word as Counsel for the Crown, but the Court after discussion, and upon much deliberation decided, that when the Traverser called no witnesses, the Counsel for the Crown had no right to reply, except the Attorney General himself, that the right was personal, and could not be transferred; and here we do not object to his exercising that right himself, but to the Solicitor General being heard in his stead.

Court. We think the case of the *King* a. *Emmett*, goes against the objection, and cannot see the distinction between the cases of High Treason and Misdemeanor.

Mr. *Bellew.* Although the Court will not concur in the distinction between High Treason and Misdemeanor, yet it probably will admit the similarity between cases, all of which are cases of Misdemeanor. In the case cited from *Espinasse*, *Lord Kenyon* doubted the right, but said, if it did exist, he thought it bad in practice, and when Attorney General he never claimed it. In answer to this is the case of the *King* a. *Emmett*, but that was one of High Treason, and subsequently we have the late case of the *King* a. *Cox*, which was a case of Misdemeanor. The result then is, that the case of the *King* a. *Emmett*, which is considered of sufficient weight to out-balance the case decided by *Lord Kenyon*, is over-ruled by the *King* a. *Cox*, which is not only a later case, but like the present one and also that decided by *Lord Kenyon*, a case of Misdemeanor—precedent then against precedent, the rule is that the latter precedent shall prevail. But let me add one word as to the justice of the case, what is it that the Crown is here contending for? Mr. *Attorney General* has opened the case, and must be supposed to have stated all that was necessary for the pro-

secution, as to the nature of the case, and the bearings of the evidence. Mr. *Burrowes* for the Traverser has observed upon that evidence, and what the general view of the subject required—we have produced no new evidence, both parties are thus far equal. What then, let me repeat, is it that the Gentlemen concerned for the Crown are contending for? Why, for an advantage over the subject by having two speeches against one. And is this a case where such an advantage ought to be sought for, as if the Crown could not venture to meet the subject in the present prosecution, on equal terms; and would it not be wiser to adopt *Lord Kenyon's* practice as stated by himself—that is, supposing the right to exist, never to claim it, satisfied of its being practically bad.

The *Chief Justice.* I have always known it to be the right of the *Attorney General* to have the reply, and I do not think the case with *Lord Kenyon's* observation can be binding in the present instance.

Mr. *Burton.* Perhaps the Counsel for the Crown will let the matter rest here, and allow the case to go to the jury.

Attorney General. I certainly cannot think of waving any right upon such an occasion.

Mr. *Burton.* I hope then your Lordships will allow a second counsel to be heard on behalf of the Traverser, since the reply does lie, and two counsel are to be heard for the Crown.

Court. Certainly.

MR. GOOLD.

Gentlemen of the Jury—I am counsel for Dr. *Edward Sheridan,* the Traverser at the bar, and as such am about to address you, upon probably the most important subject that ever attracted judicial notice; and from my heart I lament, that so great a cause has not obtained a better advocate. I should miserably judge of my few pretensions to legitimate fame, if I did not avow in the face of this auditory, that I never arose in any assembly so completely oppress by the contrast of my exertions with those of my able and eloquent friend, whose display of manly eloquence has been so fascinating by its beauty, and so dazzling by its brilliancy. He has

exhausted this rich subject of a Nation's welfare, by the depth of his research and the vigour of his argument. I think I see the powers of his mind impress upon the Jury a proper sense of their duty, convincing them of the necessity of putting down persecution, by their verdict, and consecrating by their decision this day the blessings of the British constitution. Called upon unexpectedly, to speak to such a cause as this, I should sink beneath the weight of so arduous a duty, but that it pleads for itself. It is the cause of the country,—it is the cause of us all—it is the cause of truth, and the Divine Majesty of Truth is its own sublimest and most successful advocate.

I should have wished that a case of such magnitude, which has created such a trembling anxiety in every human being in this island, had been conducted with a feeling of liberality—with a sense of decorum, which would put the decision of the question above doubt or dispute. How far that great political purpose has been atchieved, the Court, the Jury, and the public have seen. In the history of the most eventful times; in the history even of this country, I never saw a Court of Justice contaminated by such a spectacle as was yesterday exhibited. It is the privilege of the Crown to put by the most respectable of our fellow citizens—it is the case—I don't dispute the privilege; but the exercise of it involves a sound discretion, and I did not suppose, that in a case of a prosecution on the part of the administration of the country on one hand, and the people of Ireland on the other, the only man challenged by the Traverser should be retained against his will; and that in twenty-two instances the Crown should exercise their right of putting aside the most respectable citizens of Dublin. I don't complain of his Majesty's *Attorney General*; it is his duty; and God forbid I should encroach on any of his prerogatives. But Gentlemen of the Jury I will tell you of what I complain. I complain of that disgraceful exhibition, which shocked the feelings of every man who witnessed it; I complain of a known follower of the Castle, that minion of the man in power, bearding a Court of Justice with a paper in his hand, attended by his coadjutor, a Magistrate of *Police*, challenging the Jurors as they came to the book. I do complain that this Court of Justice should be exposed to such a degradation, as to see that man grinning with all

the ferociousness of delight, when a particular juror had kissed the book. My Lords, I do complain in a constitutional point of view, that Mr. *Lindsay*, one of the very Grand Jurors who found the bills, was the satellite who attended on that immaculate minister of justice to take challenges to the jury. It was then imagined victory could be no longer doubtful, and the fate of my client, and the hopes of the Catholics, and the people of Ireland would be consigned to the same tomb. But, Gentlemen, your virtuous and honest verdict will, I am confident, disappoint their hopes and confound their machinations. Yet I do complain, that the Jury as they are now impannelled, are placed in a most awkward situation, outraged in their character and insulted by that selection.

Chief Justice. Mr *Goold*, I am very sorry to interrupt you, but I do not see how you can apply your observations to any thing but the evidence, or what has occurred in the cause.

Judge Day. If any improprieties had taken place you should have apprized the Court at the time.

Mr. *Burne.* It was mentioned my Lord at the time.

Chief Justice. We can entertain nothing of that sort now.

Mr. *M'Nally.* I assure your Lordships, at that very time, I apprized Mr. *Lindsay* of his conduct being illegal and indecorous, and said—How dare you Sir, after having as a Grand Juror found bills against the Traverser, come down to suggest challenges to the Petty Jury on behalf of the Crown.

Mr. *Goold.* My Lords, it is my duty to make the best case I can for my client. I'll sit down—I am stopped—let the *Solicitor General* go on.

Court. You had better go on Mr. *Goold.*

Mr. *Goold.* If any man thinks I am an advocate for revolutionary doctrines he is mistaken. My conduct, and principles are well known. At that time, when the tide of revolutionary enthusiasm bore down every settled system of rational government; when the youth of this country was fascinated with the novelty and glare of French principles, I stood forth against their influence or adoption, and combated those opinions which added fuel to the conflagration—My life and conduct therefore will crush in its birth, any accusation against my loyalty to my King and attachment to the Constitution. But I

repeat it, yesterday's scene was a disgraceful exhibition in any country, boasting of its freedom, or the purity of its courts of justice.

Mr. *Justice Day.* It is a pity you did not mention this yesterday.

Mr. *Gould.* It was mentioned; we complained of it. The crown challenged twenty-two respectable citizens of Dublin, at the suggestion of those very men.

But I do implore you, Gentlemen of the Jury, not to suffer yourselves to become the instruments of power. I call upon you, in the name of Heaven—I call upon you by all that is valuable in life; for the honour of the Irish character; for the sake of human nature, that though the panders of the Castle have sought to gibbet you, for public obloquy, you will not gibbet yourselves. This indictment is framed upon an act of parliament, the growth of a particular occasion. It was not directed against the Catholics of Ireland. I believe I may say in the hearing of every man who was then alive, that the act was levelled against particular associations;—against those seditious conventions at that time called to assemble in *Dublin*, *Dungannon* and *Athlone*;—against those meetings for general political purposes—not only to petition parliament for redress of particular grievances, but to new model and modify and arrange (according to their own speculations) the constitution of Ireland. At that very time when this act was framed, with a view to prevent those unlawful assemblies—those revolutionary conventions, which aimed at political power, and thereby at the dissolution of the British connection—at that very period when Mr. *Wolfe* brought in the convention act, the *Catholic committee* had a known existence;—was negociating with the Castle of Dublin, with the court of St. James—with Mr. Secretary *Hobart*, Mr. *Pitt* and Lord *Melville*. On the construction of the statute, it would be in vain for me to throw any additional light; the legal and inestimable commentary of my learned friend has exhausted every topic which good sense, sound judgment and integrity could suggest. I will, however, call the attention of the court, and of you, gentlemen of the jury, very shortly to the object of that statute. The act recites, "Whereas the election or appointment of assemblies, purporting to represent the people," and so on, then it goes on to say, "Be it

" enacted that all such assemblies are unlawful." The act was manifestly levelled at associations at that time in existence—conventions, which it is impossible for any but the law officers of the Crown to confound with the *Catholic committee*. The Catholic committee, at that time, was sitting, was negociating with, and at that very period was acknowledged by the legislature: at that very period the Catholics were transacting by delegation. On that word, delegation, I will grapple with the Crown, hand to hand, and foot to foot; and on the constitutional right which the Catholics then exercised—a right avowed by the Parliament, and made sacred by that statute under which the traverser has been indicted. At what was the act levelled? At the convention of *Dungannon*, and similar associations; but it has been left for the æra of the *Richmond* administration—until my honourable friends Mr. *Saurin* and Mr. *Bushe*, have become the chief law officers of the Crown—hitherto so highly distinguished for their liberality and patriotism; it has been left for that administration, and to such men, to say, that a *Catholic committee* is a standing violation of the law. It has been reserved for them to bring a prosecution against a nation, and a bill of indictment against a whole people. My learned friend, Mr. *Burrowes* has, with a force of argument and felicity of expression, peculiar to himself, drawn the distinction between representation and delegation, that nothing almost remains for me to say in illustration of the point. What is representation, and what delegation? The act clearly means *that representation*, in which all the powers of the constituent are vested, where, by the election of the representative, the will is conferred, to be freely exercised, uncontrouled, upon the question of debate. It is a transfer of individual natural right to the community for the commonweal. A member of parliament is not bound, either legally or constitutionally, to obey the dictates of his constituents. No doubt, as my learned friend has said, a wise and prudent man would pay attention to the desires of his constituents. But it is not imperative, but how do I define delegation? Delegates are trustees for a special purpose, bound by the condition of the trust to which they must adhere, to obey the instructions of those who sent them. But supposing, in the present case, that a delegation was proved, which I by no means admit,

what would it amount to? Not, certainly, to a breach of the convention act. The delegates of the Catholics of Ireland met for the sole, naked and exclusive purpose of petitioning—a right pointedly and avowedly saved by the last section of the statute. A representative, by virtue of his character, and from the very nature of his constitutional functions, is invested with all the power, privileges and rights of those he represents. The delegate is the agent—the servant of his employer; obedient to his will; no more a free agent than the law officers of the Crown, condemned to perform the business of administration, on pain of being dismissed from their lucrative employments. Would it be determined by any lawyer, that if a revenue act passed, which affected any particular set of men, such as brewers and distillers, and that they, having assembled at some particular place elected, not a representative, but a limited delegate, to apply for the repeal of that fiscal law, which bore hard on them, that they would be criminal under this statute.

I say therefore there are two things, of which the jury must be satisfied, before they bring in a verdict of guilty. First, that the committee of which evidence was given possessed all the power of representation, and not a particular delegation, and also that petitioning was the pretence and not the purpose of the assembly, if a plain man was to take up the act and look into it, and at the same time look into Johnson's Dictionary, would he not conclude the definition of pretence to be a false suggestion. Perhaps it may be thought cavailling in me to say, that pretence is rendered unequivocal by the preposition *under* being joined with it, and such an elucidation should not be deemed trifling when we find some of the greatest questions of property have been decided by the distinction between *issue of the body, and issue on his body*, and the word *under* therefore is of value to the construction of the statute, for it is impossible that *sub prætextu*, under a colour or pretence can mean any thing but a false pretence.

We now, gentlemen, come to the saving clause of this act of parliament; and will any man say that a proviso because it was introduced to satisfy the purpose or opposition of a party of that day, should now be considered a nullity. A proviso is introduced into a statute to take care that the right which is saved

should not be injured by that which is enacted, and leaves it as it was before, what was the common law before the passing of the act? What is it now in England? will any man tell the people of England they dare not delegate a committee for the purpose of petitioning. Would the spirit of the British constitution tamely submit to such an injury to her strongest bulwark, and her proudest boast, the subjects' safety, and the prince's honor,—*the invaluable right of petitioning.* The people of England have never surrendered it,—the people of Ireland I trust will not be stript of it by a strange and forced construction of a statute,—a statute recognising that right and reserving it, a statute passed when a Catholic committee existed, communicated with the government, conferred with the people, complained to parliament and had their grievances redressed. It will be in vain to say, the clause was inserted, to gratify an opposition or a minister in the house of Commons, a court of justice must give a legal operation to the act, and this proviso becomes nonsense if it does not mean this, the undoubted unimpeded right of petitioning for the redress of grievances. If it denounces prevention and impediment, it legalizes facilities, if it saves any right, it saves the right of petitioning by delegation, and will any man say, that the right of petitioning is not impeded, if this act is construed to prevent petitioning by delegation. The court is bound to give operation to every part of the statute, establish that right; the act becomes intelligible and consistent: surrender it; and you deprive the people of their dearest privilege, you embarrass the law and make nonsense of the act. I will not travel into the distinctions of his majesty's Attorney General, I will not wade through his statutable constructions, or follow him through his mazes of research and of argument and of ingenuity, for I will tell your lordships, the law of liberty requires no such subtilties, and the laws of any country become tyranny when its enactments are obscure or require ingenuity in their construction or application; and by no principle of the law or constitution is any man bound to interpret its ordinances, except by the dictates of common sense and honest intention, I say that man entertains more than *Machiavelian* principles,

who can call upon an excellent and honest jury to say, they will give to a penal statute that construction, which will consign a worthy and unoffending man to imprisonment and beggary, and for what? because he has given to an act of parliament that meaning, which common sense dictated, which every author in the English language with Doctor Johnston at their head, had taught him to believe, was the only one in acceptation. Is such a law, the law of freedom! no, I will loudly tell the world, it is tyranny and oppression, and therefore I do call upon the court and the jury, to give the words of the act, that meaning which every man who reads it, will say is the only plain and feasible construction. In almost all cases the very mention of the crime, in reading an indictment, offends the moral instinct. Here is a case, where when the indictment is read, so far is the alleged criminality from offending the moral instinct, that we find put upon record, one of our most invaluable rights, a right without which we are nothing, but with it, we can meet the oppressor's wrongs and abash his pride. Prayer and complaint have ever been the privileges of the humble and unhappy; and cursed be the man, who would rob the wretched of those even unprofitable blessings. The right of petitioning has been the safeguard of the constitution, and without it England would have been for ever lost. That constitution with all its bulwarks has been given to us, and by the blessing of God we will defend it, and therefore I call upon the jury to be the picquet to guard its outworks and if they are driven from them, either by stratagem or assault, not to be the first to fire upon their own friends. The right of petitioning is that privilege of the people, which no prince or minister either in his strength or weakness has contested or infringed. It is the birth right of every man born within the pale of the British constitution; it takes its nature from divine origin; It outlived the bad times when oppression would have trampled it under foot; and after the best blood of Britain had flowed in its defence, it was recognized as the imprescriptable and immortal right of the people of England. It is the only solace of the poor and injured, and he who strikes at it, wages an impious warfare against God and man—we are destined by providence, it is our lot to be petitioners, let not then the vanity of man dictate to the high authority of Heaven;

for woe to that system, which would for a moment either defeat or circumscribe its divine operation.

Gentlemen of the jury, I had proposed to myself, to take a view of the history of the Catholics of this country, which however has been most ably detailed to you, by my learned friend, whose accurate and unanswerable statement has placed me in an awkward situation, by anticipating every argument on this subject. I shall therefore advert to some of the topics of the *Attorney General*, whose statement I must say, was one of the most extraordinary I ever heard put forward, unsupported by a scintilla of evidence. By it he has laboured to impress upon the minds of the jury, that treason and sedition exist in the Catholic body.

Mr. Attorney General.—I beg *Mr. Goold's* pardon; but what I did say as to the existence of sedition and treason in this country, I did not confine to the Catholic body—my observation was general, nor did I mean so to impute it.*

Mr. *Goold.* I certainly must have misunderstood the *Attorney General*, and I am sure I have done him a great

* On this day (Wednesday, November 27th 1811.) Mr. *Goold* having applied to the court to fix a day for the trials of the other traversers, Messrs. *Taaffe, Kirwan, Scurlog*, and *Burke*, which was accordingly done, for the first Monday after the first day of Hilary term.

Mr. O'Connell. My Lords, as counsel for Mr. Kirwan, I am instructed to offer a consent to have his trial disposed of at Nisi prius. There is no doubt it may be done by consent; Mr. Kirwan's great and laudable anxiety of mind, results not so much from the inconvenience of delay, as on account of the foul imputation of treason and sedition cast upon the Catholic body. The Attorney General has repeated that charge not less than seventeen times, against the Catholics of Ireland; and I beg leave to observe in contradiction to the assertion of any man, I care not what rank he holds in the state, that the charge is utterly unfounded; for the loyalty of the Catholics of Ireland, is of a description little understood by his majesty's Attorney General, because it is disinterested, as it is enthusiastic.

Mr. *Attorney General.* I never imputed disloyalty or disaffection to the Catholics of Ireland: of their loyalty, I ever entertained the highest opinion, and never harboured an idea to the contrary.

Chief Justice. The court has heard much said on the subject, from both sides, I did not hear any such imputations,—the Attorney General has disclaimed them, and I am certain nothing of that nature fell from the court.

Mr. O'Connell. The imputations being disclaimed, I am satisfied, but I felt it a duty which I owed to my clients, the Catholics of Ireland, and myself, to state, that such accusations would be in truth and in fact utterly false and unfounded.

kindness, in thus giving him an opportunity of explanation, but then I ask, if there be neither treason or sedition abroad, where are those grounds of alarm, which has been excited in your minds for the safety of your country. It has been too much the order of the day, to cry down our national loyalty; Ireland is misrepresented.—It has been the privilege of every mercenary ruffian to degrade in the eyes of the other parts of the empire, the character of this country; If the press of Ireland has teemed with libels upon the administration, it has also teemed with libels upon the people, and the cause of the country, the cause of Europe committed with the struggles of the empire and of Ireland, the strongest arm of that empire, is weakened and embarrassed by those hired calumniators, who paralize our energies, by vilifying our character, and who would separate the two kingdoms, by making them disgusted with, and jealous of each other. There is, Gentlemen, an animal of recent growth in our country, a creature bred by public calamity, and bloated by national division, preying upon a people whose happiness it is poisoning, and fermenting their civil and religious discords, because he would be annihilated with their extinguishment; a being who is every thing, when the country is nothing;—but nothing, when the country is every thing; who misrepresents the people to the prince, and lives upon the fruits of the land it calumniates; and tells the people of England, that their fellow subjects of Ireland are not to be trusted, that they abhor all allegiance, betray all confidence, and contain nothing but the very elements of treason and sedition. The people of England are just and generous, they are a loyal and a free people, but they acquire their opinion of the Irish character, not from observation or experience, but from the labours of those hired defamers and their miscreant misrepresentation; I am glad I gave the Attorney General the opportunity of doing the Roman Catholics of Ireland that justice they deserve, I am glad to find an admission, that treason does not exist in their body, it would be dreadful to think, what the consequence might be, of five millions of his majesty's subjects being subject to such an imputation: but after all, does this people stand in need of my attestation, of the purity of their principles, or the rectitude of their conduct; has a century of suffering submission rolled over their heads, during which they have exhibited, nothing but peaceable de-

meanor, and unshaken loyalty, and do they require any such humble individual as I am, to evidence their worth, or back their claims to civil equality and political independance.—No; their worth is recorded in the pages of the statute book, and their claims are written upon the heart, and recognized by the sympathy of every unprejudiced and truly patriotic Irishman. Search the history of the world, and there is not to be found, such another instance of a whole people, so galled by penal laws—so insulted by taunting tyranny, yet so completely loyal to their prince and the constitution; they seemed to love and admire them, they further they were removed from them; and is it wonderful, they should so anxiously wish to be incorporated with that constitution, for which they have lived, for which they have sacrificed their property, and in defence of which, they are daily dying in the field of battle, or frightening the invader from your shores: and at a time, when the nations of the world are making strides for freedom, shall it be left to the calumniators of the Roman Catholics of Ireland, to say, that five millions of such a people as I have stated them to be; are proscribed the participation, and unfit for the enjoyment of liberty: but it is not enough for their enemies, to tell them they are not identified with the constitution, they are not committed with the safety of the country, as the equal subjects of one king, but that they shall not be suffered to throw their petition at the foot of the throne or the legislature: I say woe to the system of government which would seek to perpetuate such proceedings: I say woe unto it, for it cannot long stand.

Gentlemen of the jury, what are you called upon to do in this case? You are called upon to convict upon the slightest evidence, a valuable fellow citizen of an intentional violation of the law: if I were a juryman, sooner would I consign my arm to the flames, and all my family to penury and want, than find a verdict against Dr. Sheridan, upon such evidence as you have heard. I have attended many cases of prosecution, and never saw a single instance, in which the case was so miserably supported on the part of the crown.

I attack this case as being on the part of the crown, a tissue of falsity and suppression. Let them produce any other, I will grapple with the crown on it, and fear not success. I beseech you, Gentlemen, to banish from your

minds the recollection of any calumny, by which the bad part of the press of this city may have in some measure influenced you, be unprejudiced, that is all I demand of you, come to the consideration of this question, with minds like blank paper, spotless and uncontaminated; and now let me ask you, has a case been made, upon which you can give a verdict as *probi et legales homines*, what says the first witness; that there was no other object but that of petitioning. I heard no tumult; all was decorous; I could not from the respectability of the meeting suspect any thing else; it lasted half an hour. Go Gentlemen, go to your jury box, and if you will, if you *must*, convict Doctor *Sheridan* of this high misdemeanor on those facts. But those witnesses heard that other business was to be transacted, but they said no other business was *done*. Convict I say if you please *Doctor Sheridan* upon such evidence as this, and meet if you can your fellow citizens, after robbing them of their privileges. I cannot prevent your doing so, but your oaths will prevent you, for I know you are men, who will not be bound by that scandalous selection; you must feel disgusted and insulted by what passed yesterday; and you will do your duty, unawed by power, uninfluenced by prejudice. Now gentlemen as to that Mr. *Huddleston*, how does this evidence affect the traverser, he has very learnedly given you an account of a meeting, and his observations upon their transactions; but *Doctor Sheridan*, was not there, what then becomes of all that detail of facts, which happened in his absence, is he bound by resolutions to which he never assented; and not even the resolutions of that assembly, but the resolutions of the memory of a man, who had lost his notes, the memorandums of those transactions which he never looked for, and therefore could not find, and a man who told you, that he refreshed his memory as to the transactions of the month of *July*, by reading a letter of the *March* preceeding, are you to rest your verdict upon the testimony of such a man, who by his own confession was a voluntary witness, tendering his evidence to *Sir Charles Saxton*.

Suppose Mr. *Huddleston* has sworn gospel and should be believed by you, yet, Gentlemen, he has said nothing that can affect *Doctor Sheridan*, or prove the indict-

ment. Carry Gentlemen in your recollection, what you heard to day on the re-examination of *Mc Donough*, we could not see those informations, we could not compare the oral with the written testimony, but the court voluntarily and sharply examined him upon his prevarication, and we have a right to stand upon the credit of that man, whom if you find tripping in his evidence will you upon it, imprison a worthy fellow citizen, and beggar him and his large and respectable family. But who are those witnesses? Is there any allegation that those men were not under the power and dominion of the magistrates. Have we any reason to suppose *Major Sirr* unfavourable to the conviction of Doctor *Sheridan*, when we found him empannelling a jury against him. There has been, gentlemen, too evidently, training; but from what source I cannot say. But, gentlemen, do not mistake. I solemnly assure you, I mean no insinuation against the counsel for the Crown. No; my Right Honourable friend stands too high in his own, in his friends, and in the public estimation, to suppose he could be implicated in such a nefarious proceeding, and I should be the last man on earth to cast such an unmerited calumny upon him. But Gentlemen my learned friend has told you, that those meetings have given rise to the inflammatory debates and seditious speeches, which have disquieted the minds and disturbed the peace of the people: no such thing has been proved. But suppose it was proved; it would only come to this, that there is no human institution perfect, no *good* without its attendant *evil*, and I would consider these the inseparable, but remediless abuses of our free constitution, spots on the disk of the sun; loathsome excrescences, which may disfigure, but cannot alter the essence of the body.

I well know, that men in power are but too apt to look with a jealous eye at all those, who question their measures or dispute their claim to political rectitude. The inflammatory declaimer; the republican incendiary are the terms of ordinary application, to every sceptic of ministerial infallibility. It recalls to my mind those times when in a public assembly, my learned friend and I denying the omnipotence of parliament, were called incendiaries, and the character he then supported and his patriot name, so justly earned, will immortalize him in the annals of his native country. We were then the

incendiaries that opposed an evil administration, and many of my learned friends who are now counsel for the crown, were then contented with their calumniated company; the whole population of this Island which at that time had the impiety to deny the omnipotence of parliament. It was the object of the then administration, to defile and vilify every thing that was honorable and independent in the kingdom. Under such circumstances and with such motives, prosecutions become persecutions, and instead of culprits they make martyrs, and that is a dangerous policy, for when you make one martyr, you make a hundred proselytes; and in one month you may convert the whole population of Ireland.

Gentlemen of the Jury, the entire of this proceeding has been characterized by peculiar weakness and infelicity. The administration of the day, have shewn but little judgment in the selection of their victim. They have brought to the bar of a court of criminal justice, one of the most respectable of our fellow citizens; a man of letters; a man of morals; a man of studious habits and peaceful pursuits; a man admired for his talents, and beloved for his goodness; a man, whose very *name* is propitious to the cause of liberty. Yes: He does bear a name that is Ireland's boast,—is Ireland's pride; a name, connected with the legitimate vanities of our country; a name, that uninfluenced by power; unseduced by false popularity; unenriched by corruption; unsubdued by poverty, and unappalled by misfortune, has kept the steady and even tenor of its way, and has been at once the best prop of the monarch's just prerogative, and the invincible champion of the rights and liberties of the people. Yes! he does bear a name that brings to mind, every thing that is sound in principle, transcendant in genius, and fascinating in fancy.

But, gentlemen, if you refuse the Catholics the privilege of petitioning by delegation, What is the consequence? They may call anaggregate meeting in every town in Ireland, and who will say they cannot do it. I tell you the Catholics of Ireland are not thus to be kept down. They have a great object to obtain, and they would be unworthy to become freemen, if they did not comport themselves as such. Look at the armies that are now marshalled in the field against the oppressor of the continent? Does not the fate of the world depend upon the arm of the Catholic? Have they not, and are they

not devoting their lives and fortunes in the cause of the empire, and of that constitution from which they are excluded. I implore you to consider of the consequences of putting that construction upon the act which you are called on to do. The Catholics have the right to petition, and if they cannot petition in the ordinary way, they can and will petition in another way, which cannot be denied them, and which may be dreadful in its consequences—I mean by aggregate meetings, for the 13th of Charles II. is not in force in this country.

Gentlemen, the administration might have got a declaratory act, and construed the word *pretence*, but they dare not—they would have met a *Sheridan* or a *Whitbread*, who would have laughed it from the house. They knew they could not succeed, and that is the reason they have called on you and the court of King's Bench, to put a forced construction upon this act, which neither law or conscience can warrant.

I well recollect when it was said, that because only nineteen counties had petitioned, that the petition was not the general petition of the Catholics of Ireland. The statute of 1793 only gave them a source of bread, but not of honour—Honour, which stimulates the ambition and fans the kindling spark of genius in the minds of the noble and high minded—it removed some disabilities, but bestowed no privileges—it made them useful to themselves but not to the state.

Gentlemen of the jury, I must again observe, that this is the most important case that ever attracted public notice. I never saw a case so identified with the fortunes of the country, as to be either a great blessing or a dreadful misfortune, with the administration on the one hand, and the great body of the population of Ireland on the other. But as to the respectable man now on his trial, your verdict may condemn, but conscious innocence must acquit him; that verdict may consign him to a prison, but his virtue will smile at the fearful form that drags him to confinement. He is just, and he fears not. You may incarcerate within the damp walls of a dungeon the body of that man—a man, better, perhaps, than many of his advocates, and some of his judge: but his soul will walk abroad, haunting and terrifying the guilty consciences of those who may have conduced to his sufferings and oppressions. Good God, gentlemen, What an awful picture; what an eventful prospect is

revealed, when we call to mind the progress of usurpation, and the success of impiety and oppression. When we look abroad and view the continent of Europe moulded into one formidable alliance against us, when we view the wreck and ruins of every thing that was splendid and noble, states and kingdoms collected into one splendid monument of greatness and folly, and the rather when we see the venerable constitution of England raise its head amidst such a pile of destruction, surmounting the dissolution of the political world, and affording to excluded liberty her last and best asylum. I cannot help exclaiming with wonder and dismay—What, when we are threatened with such formidable foes from without, shall we raise up against ourselves adversaries from within! Shall we make sailors and soldiers for France, and arm our enemies against us! Let us deprecate such devoted fatuity; the madness of a capricious and tyrannical policy will ruin us; wisdom will save us; and only that political wisdom of identifying the population of Ireland with the constitution of England, calming their disquietudes by equalizing their rights, and consolidating the strength of the empire by uniting the people.

MR. SOLICITOR GENERAL

Replied for the Crown.

Gentlemen of the Jury, I offer myself to your attention, with very little hopes of engaging it. You have witnessed such displays of a splendid eloquence, so many enthusiastic appeals have been made to your passions; you have been so dazzled by light and so heated by fire, that I must at least wait until the temperature of your minds shall have cooled; I must allow you to recover from the intoxication of your feelings, or I must despair of making any impression by an address, in which it is my determination to confine myself exclusively to the only two topics, which seem to have been forgotten this day; at least they seem to have been thought of comparative insignificance, the law and the facts of the case now before you.

It is not my inclination or my duty, and I disclaim the right to address you upon any of those popular topics, which have been so laboriously and passionately urged by the Traverser's counsel. I recollect the place in which I stand; I know that I am in a court of justice, and not in a house of parliament. I shall not stop to enquire how far those

gentlemen may have abused that latitude of discussion, which is permitted to those who defend an accused man. I wish not to abridge the fair exercise of such a privilege; although I may be allowed to observe, that it has been indulged in this day without stint, and carried to its utmost limits. Be that as it may, a colder duty devolves upon me; I prosecute the man whom they defend, and God forbid that in doing so, I should appeal to any thing but your understandings; or if I had the talent of perverting your minds through the medium of your prejudices, that I should avail myself of such a power in the prosecution of the individual now upon trial, or any other man. You will give me credit, Gentlemen, for the wish to discharge my duty, and not to transgress it; and I am not willing to impute to you a different intention. I am sure that it is unnecessary to remind you that you are not impanelled to decide upon those great political and constitutional questions, which have been so much agitated this day; that you are not legislators, but jurors, and that your oaths bind you to a fair verdict between the Crown and the Traverser; but it has become very necessary to observe upon the confusion of jurisdiction, which has been contended for this day, and the very unfair attempts which have been made, to induce you to usurp the authority of the Court. Gentlemen, your exclusive province is to decide upon the facts in controversy between the parties, instead of which you have been clamorously called upon to interpret the laws of the land. The mummery of sending up into a jury-box a dozen copies of an act of parliament, has been resorted to, and you have been called upon to decide upon its policy, as if you were senators, and to construe its enactments as if you were lawyers. You have been told that its provisions are difficult of interpretation, that learned counsel have differed upon them; and it has been objected to the Convention law that it requires professional astuteness to expound it; and yet the same advocates call upon twelve respectable citizens, to resolve upon their oaths all those intricate and entangled questions, as if your habits, or your education, or your studies, enabled you to decide them; if this be fair and justifiable in the counsel for the Traverser, it would not at least be fair in me; and I protest solemnly, that if I knew a popular topic upon which I could mislead you upon the law, I would not urge it to you; and I assure you that in what I shall address to the Court upon the Convention Act, I shall think

myself precluded from directing a single observation, or a single look to the jury-box. I know, Gentlemen, that we live in extraordinary times; I know that factious and wicked men have taken the most unjustifiable means to pre-occupy and mislead the public mind; I know that the press has overflowed with the most audacious and libellous publications, presumptuously dictating to the judges of the land in the discharge of their duty, and inculcating upon juries a contempt for the authority of the Court; I know that county meetings have been convened throughout the island, that country gentlemen might enlighten the courts of justice, by their readings upon acts of parliament, and I know that the keeper of the great seal has been taught the law by a justice of the peace. But, Gentlemen, I trust in God, that those monstrous and alarming novelties may never find their way within the walls of a court. They will become the agitators and the demagogues out of doors, who without such practices, could not enflame or mislead the public mind; but I trust that the temple of justice may never be prophaned by doctrines so offensive to the principles of the constitution. That constitution defines with rigid exactness, the respective duties of the bench and the jury-box. Every constitutional mind is appalled by the alarm which is excited by confounding the functions of those contiguous tribunals. Every one would be shocked by the notion that the judge should interfere with the jury's right to decide upon the fact, and yet it is not more revolting to constitutional maxims, than that the jury should arrogate to themselves to pronounce upon the law. They are equally encroachments and invasions upon our pure administration of public justice, and if ever they be permitted, woe to the constitution; it could not survive such an assault.—What is there in the constitution, the subject of so much eulogy and declamation this day, so valuable as the administration of justice? We love the constitution because gives us for the preservation of public peace, and the adjustment of civil rights, a perfect administration of justice unknown to other countries, which in its turn supports, maintains, and preserves that constitution. Woe then to that constitution, (I borrow the strong exclamations of Mr. Goold) woe to it, when its first principle is invaded, and its corner stone subverted. I make every allowance for the advocate; I know how much his duty to his client demands from him. He may stand excused

for calling upon you for this preposterous usurpation of the Court's authority, but you could not stand justified if you obeyed the call. If this were a civil action, if a question of property depended between two parties, should the counsel call upon you to break away from the Court, and construe a limitation in a deed or a devise in a will, should you not laugh at them? What then is the difference? If you would not have a right in the one case, how can you in the other, or does a trial of this nature warrant your assumption of power, because not the property of your fellow-citizens but the peace of your country is at stake? If any man, not an advocate, gave you such advice, would you consider him as a friend, and when an advocate gives it, though you may forgive him for his zeal, will you act upon his counsel? And yet, Gentlemen, if this be justifiable where is the confusion to stop? Why have they not called upon the judges to decide upon the weight of the evidence and the credit of the witnesses? Why have they stopped half way in the discharge of their duty; and when they threw the statute into your box, why did they not send up the issue to the bench?

I own that I am warm upon this subject, and anxious to establish this distinction. No man attached to the constitution, or acquainted with the laws of his country, can be indifferent upon such a topic; but I am more—I am interested in it. My Right Hon. and learned Friend, and myself, as the sworn advisers of the Crown in matters of law, have given our opinions upon the construction of this statute, when called upon to do so, and if we have been wrong in that opinion we are deeply responsible.—Of my own opinion I think with unaffected humility; when it is supported by his, I feel an honest confidence that it is not mistaken, but even that confidence I feel not without deference to those learned and respectable persons who may have seen the matter in another point of view. I expect from them the same charity and the same fairness. They will not impute to us more than error of judgment, and if we are mistaken, let us stand rebuked, though not abashed, because no one will ascribe more than mistake to us. Let us stand rebuked I say, but by whom? Who is to judge between us and those who differ from us? Are we and our characters at the mercy of a jury usurping the interpretation of the

law? Are we to be judged by the presumptuous nonsense of Newspaper criticism? Is our knowledge of the laws of our country to be appreciated by the ravings of Country Gentlemen declaiming upon acts of Parliament—God forbid—We appeal from such arrogated and audacious tribunals, to you my Lords, the sworn Judges of the Land—you are to interpret this Act of Parliament upon your oaths and your high responsibilities. By you let us be judged, we disclaim all other authority—if you say that we have been right, we have done our duty to our Sovereign and our Country; if we have erred, I repeat it again, we are deeply answerable. To decide this question, and to leave the law ascertained and the public mind quieted upon this important subject, have those prosecutions been instituted; not for the purpose as has been unjustifiably asserted of persecuting Dr. *Sheridan*, or of subjecting any honest man to punishment. Dr. *Sheridan* has been warmly panegyrized, and though I have not the honour of knowing him, I doubt not that he deserves the eulogies, which in a trial of this nature, have been so unnecessarily heaped upon him. I will go farther and say, that I doubt not, but that he conceived himself to have acted justifiably, and violated the laws of his country without any intention of doing so. I can well believe that he and other worthy men have acted under those mistaken impressions which the misrepresentations of the Convention Act have suggested to so many, but it is not the less true, that if he has violated that law he must be convicted. No man can be so weak or malignant, as seriously to impute to Government the wish to inflict upon him those miserable sufferings which have been anticipated and deplored with so much misplaced pathos—example and not punishment is our object. If he be innocent in point of fact, and has been falsely accused; nay, if a reasonable doubt can be entertained of his guilt, or if you shall hear from the Court that in point of law he has not violated the statute, I trust that you may acquit him. None of his advocates or friends will rejoice in such an event more than myself—but if you should acquit him, let your acquittal rest upon some such solid principles as I have suggested, which will justify you to your country, your consciences, and your God. I only deprecate that most formidable of evils, characteristic of bad times, a popular verdict, which has been clamorously demanded

from you this day, a verdict which confounds every principle dear to public justice, and exhibits a Jury in the disgraceful act of trampling on the laws which they are sworn to administer.

Let me now call your attention to those facts, upon which you are bound to decide. Doctor *Sheridan* is charged with having participated in an election at Liffey-street Chapel, on the 31st of July, of five members to represent the Catholics in a Committee appointed on the 9th of July, at an Aggregate Meeting, on the pretence of petitioning Parliament for the repeal of the penal laws. In order to establish that fact, two witnesses have been produced to prove what occurred at the meeting in Liffey-street Chapel, who had been sent there for the purpose of observing what should pass; if they have sworn truly, they have proved the charge in the most distinct and satisfactory manner, and upon comparing their testimony with that of Mr. Huddleston, you will observe that the number of parochial delegates whom they represent to have been elected on the 31st, exactly corresponds with the number which he states to have been announced on the 9th of July. Those persons have been cross-examined with the utmost severity, and have been treated as if their story had been from the beginning to the end a shameful fabrication; every artifice has been practised to embarrass or confound them—they have been exposed to that unequal contest in which persons of their rank, or indeed of any rank are exposed, when opposed to a professional antagonist. The vulgar cry of spy and informer has been halloed against them, and any man who heard the cross-examination would believe that the Counsel had been instructed to deny the existence of any meeting at Liffey-street Chapel upon that day. But Gentlemen, no witnesses have been produced to impeach their moral character, or contradict their testimony; they swore that Mr. Kirwan and Dr. Burke, and many more persons now in this Court were present, and partook in the election. If their story were a fabrication, why not produce those Gentlemen to contradict it? Why not prove by them that they were not present at any such meeting, or that if they were, Doctor Sheridan was not. I need not pursue this argument further—the Counsel who was instructed to controvert the fact, has saved me the trouble; he asked those witnesses whether the resolutions which

Dr. Sheridan put at that meeting were not reduced to writing, and actually put his brief into their hands calling upon them to read the resolutions which really passed. Well then, we have got so far as that there was such a meeting; that Dr. Sheridan presided at it, and what remains? Why a question upon the accuracy of their recollection as to the substance of the resolutions. Gentlemen, unimpeached men have given you their oaths upon that fact, and who has contradicted them? Did you not yesterday hear the whole bar of the Traverser's Counsel exclaim in chorus, that they had 500 witnesses to contradict them, and that the resolutions were not as stated. What has become of the 500? not one of them has been produced, Mr. Kirwan is by my side, Doctor Burke is in my eye, they were here yesterday—surely if they had been produced, and had stated upon their respectable characters that the Crown's witnesses had been mistaken; if the original of the Counsel's brief, containing the genuine resolutions had been exhibited and demonstrated the mistake; surely you would not have been left in your present darkness, but no such light is afforded to you. Witnesses in Court who could contradict ours are withheld—the written document in their hands is suppressed, and you are called upon rashly to disbelieve what they will not controvert; to impute by your verdict perjury to the witnesses for the Crown, and to declare upon your oaths that you do not believe that which they will not deny. Gentlemen, I am at a loss in discharging this duty, to discover what I am to reply to—one Counsel asserts his client's innocence, in point of fact—the other glories in his crime in point of law—nay, the one half of each Counsel's speech is an answer to the other; they alternately rail against the witnesses or declaim in favour of the offence. What has been their conduct as to Mr. Huddleston, the remaining witness? What has been left unsaid or unattempted in his cross-examination? Two hours of precious and irrecoverable time have been consumed, in attempting to discredit a witness, who has only proved the proceedings of the Aggregate Meeting, of the 9th of July, at which Lord Fingall presided. No suborned miscreant who ever attempted to take away an innocent man's life, was ever treated with more asperity—no advocate retained for a felon at the Old Bailey, ever plunged more desperately through a cross-examination, trembling for the

wretch whose only defence was the hope of confounding his prosecutor or supporting his alibi. The man's feelings were agonized—he was stretched on a rack and tortured—his private life anatomized, his most secret sentimentsscrutinized—he was called upon to swear to his religious opinions, and even in this Court public disgust was clamorously excited, by exhibiting him as a recreant from the religion of his ancestors—his birth, his connexions, his country, his faith, his morals, his circumstances all ransacked, all exposed. He was asked was he not a Deist, was he not an Atheist, had he not been a Catholic, was he not a Protestant, had he not been an Officer, was he not a Reporter for the Newspapers, was he not an Englishman—nay, to crown the climax, was he not a Cambridgeshire man, had he not taken notes and lost his memory, had he not wished for an employment and lost his conscience. What would any stranger who had come into this Court have supposed, who had looked upon the victim on the table, and heard and seen the Counsel at the Bar? Would he not have imagined that the most shameful fabricator, of the most impudent lie was undergoing well deserved chastisement for his falsehood. What did the Counsel himself say to him? Sir, I apprize you that I am shaking your credit? Gentlemen, why so shake his credit? It required not the storm of Mr. Goold's eloquence to subvert it—a breath from Lord Fingall would have dissipated it. That Noble Personage sat under your box at the moment, and sits there now—why did he not, why does he not come forward and assert, either that such a meeting did not exist, or that he did not preside in it or that no such resolutions were passed. His oath I should not require; were he on his honor, knowing as I do his high reputation for public and for private worth, to have so declared, I protest for one, that I should abandon so much of this prosecution as depended upon any assertion, which he should so contradict. I see other noble and honorable men about me, all alleged by Huddleston to have been present on that occasion. Why have none of them come forward? How do they and my Lord Fingal reconcile it to their feelings, to sit by and hear it asserted, that the witness has sworn falsely, in charging them with having assisted at the meeting of the 9th of July. Will they say that they were not at such meeting, or will they have it understood that they and their friends struggle not

for justification but impunity? Is it the fact of the assembly that is controverted? I have not a right to appeal to public notoriety—I must observe upon evidence merely—but I may observe also upon the want of it, and I ask again is that fact denied, and if denied, why not produce those persons most capable of contradicting it? I ask into what has shrunk the pompous triumph of the defence? I ask what has became of the reiterated assertions within and without this Court of the legality of the delegation. It is reduced to a miserable denial of the fact, without the production of a witness to support it. Perhaps it will be said, that the meeting was not denied, but that the purport of the resolutions has been misrepresented by Huddlestone. With what an argument has Mr. Gould furnished me upon this topic? Do you remember the zeal and the fire, I had almost said the rage, with which after labouring to shew that there was no such assembly at all, he addressed the witness and said:—Sir, *upon your oath were not all the resolutions passed that day, reduced to writing, and have they not been published with Lord Fingall's signature in every newspaper in Dublin?* Such was the question. Gentlemen, for God's sake, what has become of all the newspapers in Dublin? Why has not one of them been produced? Why has not the secretary who transcribed the resolutions, and sent them to the press been produced? I ask again why the noble chairman, now sitting before me, and who signed them has not been produced? The word *tutored*, has been warmly, I shall not use a stronger phrase, certainly with more warmth than decorum, applied to the witnesses for the Crown. It is a vulgar and a silly insinuation which the counsel has been instructed to make. Who is so absurd as to to suppose, that those who carry on these prosecutions would condescend to such practices? I have no fear in the face of our profession and the public, to offer our characters as a refutation of the slander? What interest has any man in the conviction of Doctor Sheridan, that he should atchieve it by subornation? What motive can can be imputed to any person acting for the Crown, but a wish to assert the law, and maintain the public peace? Those who deal in such insinuations would do well to remember the nature of their own defence, consisting in clamorous invective against the credit of witnesses, whom if false, they could contradict, and will not. Let me not be answered by the trite observation that Lord Fingall and

his friends, and Dr. Burke, and Mr. Kirwan, could not be produced, because they could not be asked a question, the answer to which might criminate themselves. The reply is obvious. If the witnesses for the Crown have sworn falsely, those gentlemen could not criminate themselves, their answers must acquit themselves, and Doctor Sheridan, and it is only upon the supposition that the testimony for the prosecution is true, that any danger could result from producing them. Suppose that the witnesses for the Crown are base and infamous, yet the most base and infamous men may swear truth. Is there no corroboration of their evidence in the silence of those who could contradict them? Why has no one been produced to account for, or deny the coincidence alleged by them, that on the 9th of July, Lord Fingall announced a convention of a particular kind, and that in twenty-two days afterwards an election takes place in Liffey-street, returning for St. Mary's parish, the exact same number of delegates which had been required for every parish by Lord Fingall's proclamation Why has the defence been confined to unfounded assertion and popular clamour. I ask you again what is the fair result of such a defence? I ask you, will you venture upon such a defence to convict the Crown's witnesses of perjury? I ask you will you venture to hang a doubt upon their testimony, when the Traverser's counsel could have removed every doubt and refuse to do it? I tell you again, in anticipation of what you shall hear from the Bench, that if you entertain a doubt upon the fact you ought to acquit; but pause, pause awfully before you entertain it. It must be no light capricious doubt; such as a man finds not as a justification, but seeks for as an excuse. It must be such a doubt as a sound understanding can suggest to an honest heart. If you can entertain such a doubt, acquit. I will not use the confident language of the Traverser's counsel; I will not say find such a verdict if you dare, but I say, find it if you can.

My Lords, I turn from the Jury to the Bench, to address you upon the law of the case. I have little more to do than to go over the same ground which the Attorney General has trod before me, at the risque common to all who follow him, of effacing his impressions. Mr. Burrowes has however so strenuously contended for a different construction, that I am bound to advert to his argument, and if I can, refute it. He has reasoned on three several propo-

sitions: First, That the delegation prohibited by the statute is one for general representation, and not one for a particular purpose. Secondly, That the word pretence, means false pretence, and not real purpose, and that if the object of the delegation be really to petition, no offence is committed: and Thirdly, that by the proviso in the statute, the right of petition by the means of delegation is saved. I shall invert his order, and beginning with his third proposition, which relies upon the proviso, I shall only remark, that it must stand or fall with his second, and abide its fate, because if it be admitted that pretence means real purpose, then his construction of the proviso, which he says saves something out of the enactment, becomes nugatory; for then the statute would prohibit real petitioning by delegation, and the proviso would save it, that is, the statute would do nothing. He must therefore shew that pretence means false pretence, or the proviso is of no avail to him. In considering that proposition I shall not resort to poets or dictionaries for the meaning of the word, but being in a court of law, shall at once call your attention to an act of parliament, enacted in England, 13. Car. 2. 5. upon the same subject, and from which our Convention Act has been copied, with as little variation as the different circumstances of the two countries would permit. The object of both was to restrain the abuse of the right of petitioning. In England the mischief to be prevented was the collection of mobs; in Ireland, the assembling of self-created parliaments and conventions. Every one who knows the history of the two countries will admit that such were the respective evils at the times those laws were enacted; and it will be seen that they were made in *pari materiâ*. The word *pretence* is used in both, and if I can shew that in the English act, it does not mean false pretence but purpose and object, whether real or fictitious, I certainly shall have gone some length in ascertaining its signification in the Irish statute, which has been borrowed from the British. The title of the English act is "An act against tumult and disorders, "upon pretence of preparing or presenting public peti- "tions or other addresses to his Majesty or the Parlia- "ment." The title of the Irish act is "an act to pre- "vent the election or appointment of unlawful assemblies, "under pretence of preparing public petitions, or other "addresses to his Majesty or the Parliament." The

preambles are almost (considering the difference of objects,) the same. Now the very object of the British act is to limit the number of persons who shall prepare or present petitions to the King or Parliament, to twenty in the one case, and ten in the other, and it has been the law of England from that day to this, that no greater numbers can prepare or present petitions however real: Now, in this act, the word *pretence* is used exactly as in the Irish; "no persons whatsoever shall repair to the King "or Parliament, *upon pretence* of presenting or deli- "vering any petition, &c. &c. above the number of, "&c. &c. It will remain, then, for those who can, to shew, that in the two statutes the same word is to have two different meanings. If it be asked, what meaning is to be given to the proviso in the Irish statute the answer is obvious. It is not an exception or saving out of the act of any thing enacted in it; for whatever is so excepted is to be found in a distinct saving in the enacting clause, but it is such a provision as your Lordships well know, is to be found in several statutes, in the nature of a protestation, to exclude an unjust conclusion. It is as much as to say, let no one suppose that this act invades the sacred right of petitioning. It only enacts that the right of petitioning shall not be exercised through the medium of delegated assemblies.

Let me now call your attention to the absurdity which must follow from giving to pretence in the Irish statute the meaning of false pretence. The first section declares that all assemblies, committees, or other bodies of persons elected, or in any other manner appointed to represent any portion of the people, under the pretence of petitioning for, or in any other manner, procuring an alteration of matters established by law, are unlawful assemblies, and it shall be lawful for any mayor, sheriff, justice of the peace, or other peace officer, and they are hereby required, to disperse all such unlawful assemblies, and if resisted, to enter into the same, and apprehend all persons offending in that behalf. Now if pretence means false pretence, no magistrate would be warranted in dispersing a meeting, really, and *bonâ fide* assembled for the purposes of petitioning, and who is to decide that delicate and difficult question? Can it have been the intention of the legislature to entrust such a decision to any peace officer; and if so, how is he to decide it? How is he to ascertain whe-

ther the alleged petition be real or fictitious, except by permitting the assembly to meet and watch its conduct until it shall have concluded its business, that is, suffer it to adjourn *sine die*, in order to determine whether he ought to disperse those who have ceased to assemble. The statute also authorizes him, if resisted, to enter into the meeting; if then *pretence* means false pretence, the legality of his entry must depend not upon his inference from his observation of the proceedings, for upon this supposition he has not been allowed to observe them, but upon the soundness of his conjecture as to what he should observe if admitted, that is, he will be a trespasser or not according to the guess which he may make outside the door, as to the real object of the meeting within. The second section is not pointed at the assembly when met, but at those who in any way partake or concur in the election to it, and they are declared guilty of a high misdemeanor, nay, this is extended to all those who publish or give notice of such an election. Now, announcing the election, or partaking in it, are clearly offences, which may be committed and completed, although the assembly itself should never meet; but according to the construction contended for, they could never be prosecuted until not only the assembly had met, but until it should be ascertained by its meeting, that its pretence of petitioning was fictitious, that is, the present prosecution is premature; it should have lain in abeyance, until the Catholic committeee had met, and until the nature of its institution had been proved by the course of its proceedings. No interpretation of a statute can be sound, which leads to such absurdities, and I cannot try this reasoning by a fairer test, than by supposing that all which has been urged in argument were inserted in the statute. If nonsense should be the result, the argument cannot be good. Suppose the act to have stated that all such assemblies were at the first moment unlawful, provided that it should appear, after their sittings were concluded, that their petitions were fictitious. Suppose it enacted, that every peace officer should disperse them, provided always, that he was of opinion after they had met, that their petition was fictitious. Suppose it enacted, that every peace officer should be at liberty to enter the meeting, provided, that before he entered it, he should be convinced that no real petition was to be proposed in it. Suppose it enacted,

that merely to publish a notice of an election for such a meeting should be a high misdemeanor, provided always, and not otherwise, that thereafter it should appear, that no real petition was the object of the meeting. I cannot conceive a fairer test by which to try and decide the construction of this act. Look again at the saving in the statute for the houses of Parliament and convocation. If pretence means false pretence, then the legislature has declared that Parliament alone shall meet on the false pretence of procuring an alteration of matters established by law. Look at the words, "under pretence of petitioning for, or in any other manner procuring, an alteration of matters established by law in church and state." If pretence means false pretence in the first part of this sentence, which relates to petitioning, it must in the second, which relates to procuring alteration, and then the meaning will be, that all assemblies are unlawful, except the parliament, which pretend falsely to procure such alteration, and the necessary inference must be, that all assemblies, except the parliament, are lawful which profess truly to do so. This absurdity must follow, unless pretence, in the same sentence, shall be held to have two opposite meanings.

I come now to Mr. *Burrowes's* first argument, which, as well as I can understand it, is, that there is a distinction between general representation and delegation for a particular purpose; and he has endeavoured to establish that distinction, by reading the proceedings of some assembly, against which he says this statute was levelled, and which announced an intention to usurp legislative authority, and to change the fundamental laws and establishments of the country; and he says, that such an assembly would be within the act, but that an assembly, for the exclusive purpose of petitioning would not. I apprehend that his argument is built upon a sophism, and a mistake of the the principles of this law. It is not, as he would suggest a law against bad objects, to be atchieved by the assembly when met. It is a law against the very act of assembling. It is a law, founded on the same principles as the Whiteboy acts, in which that rage for associations, which always has been the characteristic of all ranks in this country, is denounced by declaring it a high crime and misdemeanor for persons assuming any name or badge, or denomination not

usually assumed by his Majesty's subjects to assemble, although no act has been committed or no arm has been raised. It is a law to prevent mischiefs, not to punish them when committed—it is a law passed on the recollection of the various conventions, and assemblies and associations which had from time to time threatened the peace of this country. I go not back to former centuries—the Dungannon Meeting, the Volunteer Convention at the Rotunda, the meditated Parliament at Athlone, are fresh in the recollection of many of us. In contemplation of those mischiefs which representative associations are calculated to produce, was this act framed, and the crime denounced by it is complete, whenever a representative body is elected with the view of procuring a change in matters established by law, though the mode of doing so, should be by petition. Mr. Burrowes seems to think, that in order to complete this crime, legislative authority must be usurped. Does he mean to say, that no assembly is within this act, unless it displaces Parliament, and enacts laws and imposes taxes? Does he mean to argue that the Legislature had declared that to be a misdemeanor which the law had before declared to be High Treason. Must the act which speaks of petitioning Parliament, only apply to assemblies which have displaced Parliament—what would Mr. Burrowes say of an elected and delegated assembly, if such a one should exist, which professing to prepare a petition, should sit from July to February, and day after day, and week after week, assemble and debate, and do every thing but petition, which should publish inflammatory and incendiary discussions, upon all political topics; which should mimic and travesty all the proceedings of parliament, appoint committees and receive reports, which should supersede and bestride the Legislature by the discussion of public, and the Courts of Justice by the discussion of private grievances. If such an assembly should exist, would he say, that because it abstained from imposing taxes and enacting laws, it would not fall within the Convention Act, that its innocence should depend not upon what it did, but what it did not, that its members should not be guilty of a misdemeanor, because they were innocent of treason. I think if he he said so, he would much mistake the law. I think if I said that their guilt consisted in such acts as I have sup-

posed, I should mistake it too—we should both be wrong and our common sophism would be, that we tried the legality of the assembly by the test of its acts, and not by the test of its constitution. The framers of this law well knew the tendency of such associations as it prohibits—they well knew that worthy and honourable men might engage in them, as I have no doubt that worthy and honourable, and loyal men would engage in the Catholic Committee, with the purest and the best of motives. But the policy of the law is pointed at the probable mischiefs, and the very preamble of the act is directed to the dangers, which in the language of the statute *may* ensue. What man can answer for the intermixture of those very different characters which must find their way into such an assembly. I know that the Catholic Nobility and Clergy, amongst whom are to be found the most respectable of men, were to be constituent parts, but I know that every county was to send ten, and every parish in this City to send five members. Who will answer for the description of persons that must find their way into this motley congregation. It is not from such men as Lord Fingall, and Lord Southwell, and Sir Edward Bellew, and the other honourable men of the Catholic persuasion, that such danger is to be apprehended—short lived, indeed, would be their influence. Perhaps the worst men would not be the most numerous in this assembly—it signifies not; a small minority of agitators is always sufficient for mischief. The history of mankind shews that they have always prevailed—in every such assembly they float, and the good are precipitated:—But the policy of this act is not merely pointed at the intermixture of bad, but the degeneracy of good characters. What man can answer for himself, in going into a self-constituted political society—his first steps are deliberate; his first motives are good; his passions warm as he proceeds; the applause, never given to moderation, intoxicates him; the vehemence of debate elates, and the success of eloquence inflames him; he begins a patriot, he ends a revolutionist; is this fancy or history? I well remember, who can forget the first National Assembly of France? Composed of every thing the most honourable, gallant, venerable and patriotic in that kingdom; called together for the noblest and the purest purposes, the Nobility and the Prelacy, united with the representa-

tives of the people, and the three estates promised the regeneration of the country; what was the result? The wise, and the good, and the virtuous were put down, or brought over by the upstart, and the factious, and the demagogue; they knew not the lengths they were going; they were drawn on by an increasing attraction, step after step, and day after day, to that vortex in which have been buried even the ruins of every establishment, religious and political, and from whose womb has sprung that colossal despotism which now frowns upon mankind. What has become of that gallant Nobility; where are the pious prelates of that ancient kingdom; one by one, and crowd by crowd, they have fallen upon the scaffold, or perished in insurrection. Some, less fortunate, drag out a mendicant exile in foreign lands, and others, condemned to a harder fate, have taken refuge in a Tyrant's Court, and are expiating the patriotism of their early lives by the servility of their latter days.

My Lords, and Gentlemen of the Jury—I have digressed involuntarily, I hope not irrelevantly from the argument, upon the law of this case to the consideration of the policy of the statute. It was necessary, for nothing has been more misunderstood; it has been foolishly and wickedly asserted, that this statute and these prosecutions have been levelled at the Roman Catholic cause; the charge is false, if this act were violated by any other class of men in the state, whether Protestants, Presbyterians or others; I know the fairness and the impartiality of my Learned and Right Honourable Friend to be such, that the religion which they professed would never have shielded them from prosecution. It has been clamorously urged that the Government has declared war against the subjects' right of petitioning, which Mr. Burrowes has insisted is illimitable, and like the freedom of the press not subject to previous restraint, and only controulable for subsequent excess: this is a most mistaken view of the Constitution: there is no such principle known to our Constitution as those illimitable rights; our Constitution exists by its restraints, its controuls, its checks and balances. The Royal Prerogative is defined within a rigid boundary; the privileges of the Nobles are ascertained by jealous limitations, and if the rights of the people were not circumscribed, woe be to the people, and woe to that Constitution which has been

this day so eulogized, and so much misrepresented; the state would be disorganized, the democratic part would preponderate, and anarchy would be the consequence. The contrary is new doctrine, the growth of modern and licentious times—such was not the opinion of my Lord Somers and the great men, the Whigs of his day, who in the Bill of Rights laid the corner stone of the Constitution in King William's reign. In that second Magna Charta they asserted and established this right of petition, as the birthright of Englishmen; but they did not venture to establish it, except as subject to the restrictions imposed on it by the statute of Charles II. Your Lordships know that this has been decided by the highest authority, that when upon the trial of Lord George Gordon, another opinion was contended for at the bar; all the judges unanimously declared that such was the law. That law was never enacted here, but the misfortunes of our country have made another and a different restriction of the right to petition necessary. Those laws speak a common principle, though a different language. In England the people are told that even the inestimable privilege to petition shall not be the pretext for a mob, and in Ireland they must be told that it shall not be a pretext for a convention. No rational man will say, that for the fair and legitimate purpose of petitioning the parliament, a convention of three estates, consisting of nearly six hundred persons, sitting in a public theatre, without limit or controul can be necessary; the public peace forbids such an association, and the law emphatically has declared that there shall be but one parliament in the country. I repeat it, it is new and unconstitutional doctrine to talk of the unrestrained rights of the people. What is that most precious right of the people of these countries, which the Catholic committee is about to usurp? The right of representation. That which distinguishes us from all the nations of the earth. Is it unrestrained, and until the announcing of this Catholic committee, was it ever uncontrouled? The rights and qualifications of electors are measured by property, situation and independence. The freeholders of the country alone can exercise them; some classes are excluded on account of their supposed dependence. The title to be an elector must be ascertained by registry, and identified by record. The capacity to be elected is confined within necessary re-

strictions; the law of election is complicated and nice, and a particular tribunal is constituted to administer it. The King's writ issues to the public officer, and under the heaviest responsibilities he obeys and executes it. When the senate is convened, the members are under the controul of their speaker. Their very privilege of speech is definite, and their duration depends upon the King, who can prorogue or dissolve them. Such is the utmost right of representation, which the freest constitution upon earth allows to the people, and if the popular part of that constitution were not thus restrained, it would degenerate into wild democracy and fatal anarchy. Compare this right of representation with that claimed by the Catholic committee, and in the contrast behold the wisdom of the Convention Act, and the necessity of these prosecutions. See what is the constitution of those self-created parliaments which that statute denounces as illegal, and which this prosecution is instituted to put down. What is their law of election? what their qualification of freeholders? what is their description of candidates? I assert not too much, when I assert, that if the legitimate parliament of the realm were to be assembled as this committee has been, that the constitution would not survive the first election. What is their claim to this monstrous assumption of power? It grows actually out of their numbers, and the Catholics assert it because they are four or five millions of people. What then are four or five millions to elect? whose writ summonses them? what officer in each county is to hold the election? who is to decide upon the votes? who is to identify the successful candidate? Every man of the four millions is qualified to be an elector or a representative, and in the county of Meath, my Lord Fingall, in the exercise of either character, might be jostled by a beggar or a rebel claiming a superior qualification. Can it be the Constitution or the Law that what is denied to the Parliament, shall be allowed to a Committee, and that all the evils of democracy shall be let loose upon the land; universal suffrage; promiscuous eligibility, and indiscriminate representation. But suppose this extraordinary meeting to assemble, who is to controul them if they run riot? Who is their Speaker? Who is their Serjeant at Arms? Who will have the authority, if any one has the courage to check licentious and disaffected declamation? Who is the man of any rank that would

have spirit or power to interrupt or rebuke a factious orator—which of the loyal men in that assembly would venture to chide an inflammatory harangue offensive to his feelings, and odious to his principles. If in such an assembly, a rash young man inflamed by debate should loudly assert, that the glorious Yeomanry of Ireland were the exterminators of their countrymen, and should eulogize and hold up to veneration and respect the rebels of 1798, as patriots and martyrs, who is there to call him to order? What man in a popular and self constituted assembly, would venture to interrupt him—the very nature and constitution of the assembly generates danger and encourages excess. Compare such a constitution with the established authorities of the land, all controuled, confined to their respective spheres, balancing and gravitating to each other; all symmetry—all order, all harmony. Behold on the other hand, this prodigy in the political hemisphere, with eccentric course and portentous glare, bound by no attraction, disclaiming any orbit, disturbing the system and affrighting the world.

CHARGE.

LORD CHIEF JUSTICE DOWNES.

Gentlemen of the Jury. This important case is now nearly brought to a termination, you have heard the evidence and much observation upon it, I will detail that evidence for your re-consideration, I will read the indictment upon which the traverser is to be acquitted or found guilty, according as you shall determine by your verdict, and as it shall appear that the facts in evidence are sufficient to support the charges in that indictment or not; I will explain the law (as it occurs to me) according as it arises from the facts laid before you. The indictment is to the following effect *(here his Lordship read the indictment)* you see Gentlemen that the first count in the indictment charges the traverser with having in pursuance of the resolutions of a preceding assembly assisted in the *election* of Mr. *Kirwan* to an assembly, which, it is alledged, to be an illegal assembly under the act of 33d of the King. The second count, Gentlemen, without stating the acts of the previous meeting applies only to acts done by the traverser at the meeting in Liffey-street, and to the part which *Doctor Sheridan* took in the election of Mr. *Kirwan*, as one of the representatives of the inhabitants of *St. Mary's* parish in a general committee to be thereafter held.—Gentlemen, if the facts, as charged against *Dr. Sheridan* in this indictment be established, the only question then is, how the law bears on them, and you will observe the two counts in the indictment charge. —The first, that an assembly was held on the 9th of July, and the traverser is not charged with having committed any act in this assembly, but that there was a resolution for the appointment of members for another assembly, and he is charged with assisting to carry that resolution into effect at a subsequent meeting, and in the second count, he is, without reference to any antecedent resolution or meeting, charged with the fact of joining and acting in the election of a representative to an assembly such as it describes. To establish those facts, the first witness called was *John Shepperd.* *(His Lordship here minutely stated the evidence of this witness.)*

Such gentlemen is the substance of the testimony of the first witness, and if you believe he has sworn truly, the effect of it must manifestly shew, if such acts should be criminal by the law, that *Doctor Sheridan* did act in the manner charged in the indictment, namely in the election of Mr. Kirwan, for the purpose therein stated.— This witness was cross-examined, a resolution was handed to him which he read, and said it was the same, as the first resolution passed at the meeting, but that the second was not so full, the use made of his cross-examination, was the drawing from him that the meeting was respectable and decorous throughout, and a doubt, that the word *represent* was used on the occasion. Gentlemen, James M'Donogh, was then called to the same facts. These witnesses appear to agree in their account of what passed at that meeting, the election of the five persons, the part Doctor Sheridan took in those transactions, and it will be for you to say whether, they are to be believed, and whether that assembly was of the nature as alleged by the indictment. One of these witnesses, who said he had not seen Doctor Breen at that meeting was called and explained his informations, and said that he meant to represent what he stated in his information to be this, that he saw a Gentleman whom he took to be Doctor Breen, but could not swear positively that he was at the meeting, but that he told Shepperd the other witness that he thought the Gentleman was Doctor Breen. He says that from the seven persons being named as if present in the chapel, he meant to say that he believed they were all by at the time; it was that which drew our attention to the fact of his saying, he did not see those he meant to represent as being there. As to the testimony of this man, it is for you say, whether the facts as stated took place at the chapel, if you have any doubt that they were present and saw Doctor Sheridan, acting at such an election, the whole of the case is at an end. There was a further witness of the name of Huddleston, the object of whose testimony was to establish, that a former assembly existed and that assembly did resolve upon appointing a general committee to consist of certain persons to be elected for that purpose; Gentlemen, if you shall believe that the election and the proceedings thereat took place, as stated by *Shepperd* and *M'Donough*, you are next to consider,

whether that was an election in conformity with, and the precise and identical assembly ordered by the meeting of the *9th of July*; and the identity of the assembly at which the election of these five persons took place, and at which Doctor Sheridan is stated to have been present, with the assembly ordered by the resolutions of the *9th of July*, must be established, and it is essential for you to believe it without a doubt, in order, that any thing done at that assembly of the 9th of July, should affect the traverser, and in order to establish the object of this count in the indictment. Mr. *Huddleston* was examined, *(His Lordship here recapitulated the testimony of Francis Huddleston, and recited the 4th resolution.)* Gentlemen, whether the election of the five persons at Liffey-street was in conformity with the resolution I have stated, will be for you to consider, Gentlemen there is no other evidence to identify that election with the resolution except the coincidence of the number of those elected, and the time of their appointment, you certainly find the meeting in the parish Chapel of St. Mary and five persons elected, it will be for you to consider whether that will satisfy your minds as to the connection, for I say you must believe and that without any rational doubt, that those assemblies, the one of the 9th, and the other of the 31st of July met with the same view and that the one was in consequence of the other, in order to attach the transactions of both, whether criminal or not, upon Doctor Sheridan. The facts of Doctor Sheridan having acted at that meeting of the 31st, of his having put the question on the election of Kirwan, and the other, according as you believe the evidence, it will be for you to say; but as to the law of the case whether these be facts which subject the traverser to the penalties of the act, by bringing him within the construction and operation of it, that Gentlemen, you cannot be adequate to judge of. Whether Doctor Sheridan has acted as he is charged by the indictment, it is for you to say, and if you are of opinion that he has, and that you shall be informed those acts bring him within the operation of the statute, it will be your duty to find him guilty, and if you are of opinion that those two assemblies of the 9th and 31st of July, were connected in their object, and that the one was in consequence of the other, you will pronounce him guilty of the charges laid in

the indictment, but if you are not of that opinion, nthe you will consider the election as laid in the second count, (provided you are satisfied of Doctor Sheridan's participation therein) so far criminal in is nature, as it applies to the law which will be stated to you. Gentlemen I have already detailed to you the grounds upon which you must rest your belief of those facts having happened, and I must further observe that there has been no evidence produced on behalf of the traverser, to contradict the witnesses to them. Supposing then those facts to be, as they have been given in evidence, a most important question has arisen as to the construction of an act of parliament making such acts criminal, and it will be my duty to give you the opinion of this court upon the law, as it appears to us to arise out of that statute. It is entitled an act "to prevent the election or appointment of unlawful assemblies under pretence of preparing or presenting public petitions, or other addresses to his majesty or the parliament," and Gentlemen I must observe to you, that the object of this act, was not the dispersion or prevention of assemblies meeting for a criminal purpose, and then actually exercising illegal functions, or authorizing illegal acts, for those required no new statute to designate and punish such violation of the law, and many assemblies might be suffered to proceed to obtain the object of their meeting, and not be guilty of any criminal act, except as they come under the operation of this statute, but itwas because they might become criminal and dangerous from the nature of their consitution, not that they *must*, but that they *might* become criminal, and that the legislature apprehended a danger to exist in such asemblies "under pretence of preparing petitions," that therefore, by act of Parliament, they were pronounced illegal. There being this apprehension, therefore, that mischief may result from assemblies, representing the people under the pretence of preparing petitions, the remedy with which the legislature meets the danger is, to prevent the possibility of it occurring, by destroying their existence, to punish every step towards their formation, and that by declaring them unlawful assemblies, and enjoining all peace officers to disperse them. The mischief being, the danger to be apprehended, the statute has enacted, "That all assemblies, committees, or other bodies of per-
"sons elected, or in any other manner constituted or ap-

" pointed or assuming a right or authority to re-
" present the people of this realm, or any member
" or description of the people of the same, or the
" people of any province, county, city, town, or other
" district within the same, under pretence of peti-
" tioning for, or in any other manner procuring an al-
" teration of matters established by law, in church or
" state, save and except the knights, citizens and burgesses,
" elected to serve in the parliament thereof, and save
" and except the houses of convocation duly summoned
" by the King's writ, are unlawful assemblies," and the act makes it lawful for any magistrate to disperse them. This is the remedy which the law gives to the public, in case an assembly be convened, which at any time *might* become an unlawful one; and in order to prevent the possibility of its existence, the act endeavours to stop it in its very formation, and it begins, by making it a high misdemeanor in any person publishing a notice of the election of any representative, to act at any such assembly, as was already described: and it also makes it a substantive offence, " the attending and voting at such elections, or appointment of such representatives," Gentlemen of the jury, it is contended by the counsel for the traverser, that in order to make a representative body, which meets under pretence of petitioning, criminal, that such *pretence* must be a *false pretence*, and that, if in reality their intention is to petition parliament, it is impossible any criminality can attach. This distinction seems to me, to accord very little with the different provisions of the act. The mischief which the statute means to prevent, is the possibility of the abuse of any such representative body; it is not by any means impossible that mischief should happen, although the body should in reality have an honest intention of petitioning—therefore the remedy in fact, seems to us to go to all representative assemblies, purporting to petition the King or either Houses of Parliament. The remedy appears to us to be intended by the Legislature, to prevent all possibility of mischief, by declaring all representative meetings unlawful, though in reality with the intention of petitioning. The act in our apprehension considers a representative meeting for any purpose, as a *possible* mischief to be provided against, for if it must be a false pretence, it would be *impossible* to discover it, until the mischief to be provided against had actually happened; and in fact, the act directs the Magistrates to

enter into such assemblies, to declare them unlawful and disperse them—it makes it penal for any person to give notice of an election of such representative, and therefore it cannot mean an assembly meeting with a false pretence or otherwise, for it would be impossible to know that, until it had met, and perhaps until it was dissolved. The statute also makes it criminal to act or vote at any such election, and the criminality seems to me to attach on the person who shall vote, the moment he has committed the fact, and yet if this criminality shall depend on the assembly meeting with a true or with a false pretence, or purpose, it would be impossible to bring him to justice—and it must depend upon the acts of other persons, whether the offence shall be completed or not. And it seems to us to shew, in how very extensive a meaning the Legislature thought fit to prohibit representation, for although the act could never be construed to make illegal the Assembly of the House of Commons, it nevertheless has thought fit to save, by special naming, the Houses of Parliament, and the Houses of Convocation. I have already stated some of the consequences which would follow the construing the statute, to extend, only to those assemblies, which would meet under a false pretence, and in my apprehension the act has done nothing, unless, on the whole of this case, it prevents all delegated representative assemblies meeting for the purpose, either by petition or otherwise, of "procuring an alteration of matters established by law in Church or State," and we are of opinion, that though there should appear an intention, in reality to petition the Legislature, the allegation of petitioning, whether true or false, cannot protect an assembly of this sort from the penalties of this Act of Parliament. It remains therefore, that if you do believe, that the Traverser, Doctor Sheridan, did act in the election of Mr. Kirwan, the person named in the indictment, to be one of the Committee, or to act as one of the representatives of the inhabitants of that district, in the General Committee to be hereafter assembled, as stated in the indictment; if you believe he did act in that election of those persons, and that the Committee, was, or is intended to be of the description, "for the procuring an alteration of matters established by law in Church or State;" although you should not believe that was intended to be done by violent means, yet that cannot protect those

persons from the effect of this Act of Parliament; for if you do think the assembly to be of that description, and an assembly appointed by the resolutions of the 9th of July, and that those persons were elected accordingly; I say, if you do believe those facts, and also believe the evidence of the Traverser's acts, as connected with those transactions, you will find him *guilty*. And although you should not be satisfied, as to the connexion between those two assemblies of the 9th and 31st of July; but you shall say, that the assembly at which he was present, was one for the purpose of petitioning, or "procuring an alteration of matters established by law in Church or State." If you do believe, it was an assembly of that nature, it is our opinion, that the fact of its meeting with the *bonâ fide* intention of petitioning, would not put it out of the operation of the statute.

After the jury retired, it was discovered that the bill of indictment was not before them, when Mr. *Burne* applied to the court to have the jury called out, and that the bill of indictment, or an authentic copy should be sent up to them.

Whilst the right was discussing, Mr. *Geale*, the Foreman, and Mr. *Pepper* returned into the court, and requested a copy of the indictment. They took occasion at the same time to inquire, whether they could bring in separate verdicts for the two counts laid in the indictment?

He was answered in the affirmative, and the Clerk of the Crown having enlarged the issue, the Jury again retired, and returned, after a debate of about an hour, with a verdict of

NOT GUILTY!!!

Counsel for the Crown.

Mr. Attorney General, Mr. Solicitor General, Serjeants Moore, Ball, and M'Mahon. Messrs. Jebb, Joy, Townsend, Ridgeway, and Kemmis. Agents, Messrs. Thomas and William Kemmis,

Counsel for the Traversers.

Messrs. Burrowes, Burne, Goold, Burton, Johnson, Driscoll, Mac Nally, Wallace, Bellew, Rice, O'Connell, Macklin, Ferrall, Mc. Kane, Perrin, Finlay, North, and Grattan.

Agent, Mr. Edward O'Callaghan.

ERRATA.

In Page 10—Line 16—For, *the same*—Read, *no further.*

————line 24, omit "J. Lindsay, objected by to "the Crown" being repeated.

————line 35, for, "Edward Clibborn, *objected "to by the Crown,*" read "Edward Clibborn, *sworn.*"

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